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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,

Petitioner,

v.

JEROME SAKLAD,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Whether the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, as amended ("ERISA") preempts a state law which creates both substantive and procedural rights in third parties which are not recognized by ERISA and which are inconsistent with ERISA's exclusive civil enforcement scheme.

B. Whether ERISA preempts a state law which does not "expressly refer to" ERISA plans but which encompasses both ERISA and non-ERISA plans.

C. Whether a state garnishment exemption "relates to" an employee benefit plan or merely "relates to" employee benefits.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
OPINIONS AND ORDERS BELOW	2
JURISDICTION	3
STATUTES INVOLVED	4
STATEMENT OF THE CASE	4
A. Statement of Facts	4
B. Decisions of the Courts Below	5
REASONS FOR GRANTING THE WRIT	7
A. This Case Presents Important Questions of Federal Law Concerning the Employee Retirement Income Security Act	7
B. This Court Should Resolve the Conflict Between the Oregon Court of Appeals on the One Hand and the Fifth Circuit and the California Supreme Court on the Other Hand Regarding Whether ERISA Preempts a State Law Which Creates Substantive Rights in Third Parties Not Recognized by ERISA and that Conflict with ERISA's Exclusive Civil Enforcement Scheme	10
C. This Court Should Resolve the Conflict Between the Oregon Court of Appeals and the Tenth Circuit as well as the Confusion and Uncertainty Among State and Federal Courts Regarding What it Means for a State Law to Make "Reference to" ERISA Plans for Preemption Purposes	14

D. This Court Should Resolve the Conflict Between the Oregon Court of Appeals and the Tenth Circuit Regarding Whether a State Garnishment Exemption "Relates to" an Employee Benefit Plan, Not Just Employee Benefits, and is Preempted 22

CONCLUSION 24

APPENDIX

APP. PAGE

A—Opinion of the Court of Appeals, March 31, 1993 1

B—Supreme Court Denied Review, August 24, 1993 5

C—Opinion of the Circuit Court, January 27, 1992 . 6

Opinion of the Circuit Court, April 2, 1992 ... 8

Opinion of the Circuit Court, May 1, 1992 ... 9

D—Findings of Fact and Conclusions of Law of the District Court, May 8, 1991 10

Judgment Order of the District Court, May 28, 1991 24

E—Statutes Involved 25

TABLE OF AUTHORITIES

CASES:	PAGE
Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981)	8
CSCAC v. El Capitan Development Co., 53 Cal.3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 *cert. den.* 112 S.Ct. 430 (1991)	9, 11, 12, 13
Donald H. Hartvig, Inc. v. Kellas, 113 B.R. 673 (D. Ore. 1990)	20
Eickhoff v. Eickhoff, 1993 Ga. Lexis 713 (Ga. October 25, 1993)	23
FMC Corporation v. Holliday, 498 U.S. 52 (1990)	15, 17, 18
Ft. Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1 (1987)	7, 22
Guidry v. Sheet Metal Workers Nat'l. Pension Fund, 493 U.S. 365 (1991)	18
Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9, ____ F.3d ____, 1993 U.S. App. Lexis 28698 (10th Cir. November 4, 1993)	*passim*
Heitkamp v. Dyke, 943 F.2d 1435 (5th Cir. 1991)	9, 15, 19, 20
In re Bartlett, 116 B.R. 1015 (S.D. Iowa 1990)	20
In re Garvin, 129 B.R. 598 (S.D. Ind. 1991)	20
In re Martinez, 107 B.R. 378 (S.D. Fla. 1989)	21
In re Shaker, 137 B.R. 930 (W.D. Wis. 1992)	20
In re Volpe, 100 B.R. 840 (W.D. Tex.) *aff'd.* 943 F.2d 1451 (5th Cir. 1991)	20, 21

Ingersoll-Rand Company v. McClendon, 498 U.S. 133 (1990) 7, 9, 15

Iron Workers Pension Fund v. Terotechnology, 891 F.2d 548 (5th Cir.) *cert. den.* 497 U.S. 1024 (1990) 9, 11, 12, 13

Mackey v. Lanier Collections Agency & Service, Inc., 486 U.S. 825 (1988) ..... *passim*

Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987) 7, 9

Patterson v. Shumate, 112 S.Ct. 2242 (1992) 21

Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987) 7, 8, 9, 15

Pitrat v. Garlikov, 947 F.2d 419 (9th Cir. 1991) .. 21

Plumber's Local 458 Holiday Vacation Fund v. Howard Immel, Inc., 151 Wis.2d 233, 445 N.W. 2d 43 (1989) 20

Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983) 7, 8, 15, 16

STATUTES, RULES, AND REGULATIONS:

28 U.S.C. § 1257 3

ERISA, § 1, 29 U.S.C. § 1001 7

ERISA, §§ 103-104, 29 U.S.C. §§ 1023-1024 14

ERISA, § 502(a), 29 U.S.C. § 1132(a) 4

ERISA, § 502(e)(1), 29 U.S.C. § 1132(e)(1) 4

ERISA, § 514(a), 29 U.S.C. § 1144(a) 4, 7, 8, 16

Col. Rev. Stat. 13-54-104 ..... 10, 19

Fla. Stat. ch. 222.18 10

Ga. Code Ann. § 18-4-20 (Supp. 1987) 16
Ga. Code Ann. § 18-4-22.1 16
Ga. Code Ann. § 18-4-60 (1982) 11
Ind. Code § 34-2-28-1 10
Or. Rev. Stat. § 23.160(1)(j)(C) 4, 5
Or. Rev. Stat. § 743-050 4
75 Pa. Cons. Stat. § 1720 (1987) 18
Sup. Ct. R. 13.1 3
Sup. Ct. R. 13.3 3
Sup. Ct. R. 29.1 1

IN THE

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OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,

Petitioner,

v.

JEROME SAKLAD,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

PETITION FOR WRIT OF CERTIORARI

Standard Insurance Company ("Standard")[1] respectfully petitions this Court for a writ of certiorari to review the final judgment of the Court of Appeals of the State of Oregon in this case.

The Oregon Court of Appeals held that, as long as ERISA plans are not singled out (i.e., the state law encompasses both ERISA and non-ERISA plans), the states may enforce exemption statutes which prevent an ERISA

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[1] All parties to the proceeding below are listed in the caption to this petition. Standard Insurance Company has no parent companies or subsidiaries (other than wholly owned subsidiaries) to be disclosed under Sup. Ct. R. 29.1. In addition, at all times relevant hereto, Standard was a fiduciary with respect to the Master Plating, Inc. Benefits Plan ("Master Plating Plan") and the Industrial Electronics Engineers Benefits Plan ("IEE Plan").

plan from collecting money judgments against a defrauding welfare benefit plan participant. This holding effectively creates substantive rights in third parties (e.g., welfare benefit plan debtors) which are not recognized by ERISA's civil enforcement scheme. Specifically, the Oregon Court held that a state garnishment exemption for disability benefits was not preempted by ERISA where the exemption did not single out ERISA plans for special treatment. It did so, apparently believing that Congress meant that *exemptions*, not just garnishment procedures, are purely matters of state law. This holding was based on an incorrect application of prior holdings of this Court, was at odds with decisions in state and federal courts, created substantive rights in third parties not recognized by ERISA and which are inconsistent with ERISA's exclusive civil enforcement scheme, destroyed the uniformity of regulation created by Congress in enacting ERISA, was based on a fundamental misunderstanding of the policies of Congress that underlie ERISA, and will have a profound effect on defrauded ERISA plans in their attempt to recoup plan losses.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals of the State of Oregon, filed on March 31, 1993, is reported at 119 Or.App. 91, 849 P.2d 1150 and is reproduced at Appendix ("App.") 1-4. The Supreme Court of Oregon denied review on August 24, 1993, which decision is reported at 317 Or. 486 and is reproduced at App. 5. The opinions of the trial court are reproduced at App. 6-9.

JURISDICTION

This action was filed in the Circuit Court, Multnomah County, Oregon. On three separate occasions, the trial court rendered judgment in favor of petitioner on January 27, 1992, April 2, 1992, and May 1, 1992, permitting petitioner to garnish certain employee disability benefits in order to satisfy a judgment for fraud rendered by the United States District Court for the Central District of California on May 28, 1991. The federal trial court had jurisdiction over this action pursuant to section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).[2] Respondent appealed the state court garnishment order to the Court of Appeals of Oregon. The state appellate court reversed the trial court garnishment order on March 31, 1993. The Supreme Court of Oregon denied discretionary review on August 24, 1993. This Petition is being filed within the 90-day period following entry of that order pursuant to Sup. Ct. R. 13.1 and 13.3. This Court has jurisdiction pursuant to 28 U.S.C. § 1257 because the validity of a state statute is drawn in question on the ground of its being repugnant to the laws of the United States.

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[2] ERISA, section 502(e)(1) [29 U.S.C. § 1132(e)(1)] provides as follows:

> Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

STATUTES INVOLVED

This case involves sections 502(a) and 514(a) of ERISA, 29 U.S.C. §§ 1132(a), 1144(a)[3] and Or. Rev. Stat. §§ 23.160(1)(j)(C) and 743.050.[4]

STATEMENT OF THE CASE

A. Statement of Facts

From 1980 through 1984, Standard paid defendant approximately $200,000 in disability benefits, including a substantial lump sum payout of benefits for the duration of defendant's expected life. The benefits were paid under an ERISA plan known as the IEE Plan. Standard paid these benefits in reliance on defendant's representations that he was totally disabled and that he was not engaged in any occupation, work, or employment for wage or profit. The defendant's representations were fraudulent.

As found by the federal district court,[5] in January, 1980, at a time when defendant was receiving monthly disability benefits from Standard under the IEE Plan, defendant became employed by Master Plating, Inc. and became a participant in a disability plan known as the Master Plating Plan. The Master Plating Plan became funded by a policy of insurance issued by Standard. In 1989, defendant made a claim for, and was awarded, disability benefits under the Master Plating Plan. In the course of re-

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[3] The text of these statutes is set out verbatim at App. 25 and App. 26, respectively.

[4] The text of these statutes is set out verbatim at App. 27 and App. 28, respectively.

[5] The federal district court opinion and judgment are attached at App. 10-24.

viewing defendant's claim for benefits, Standard learned that defendant had been working at Master Plating during the time period for which he received disability benefits under the IEE Plan and that defendant had obtained benefits under the IEE Plan by fraud and deceit.

Pursuant to ERISA, Standard filed suit against defendant to obtain restitution of said benefits in the United States District Court for the Central District of California. On or about May 28, 1991, judgment was entered in favor of Standard for over $360,000.

B. Decisions of the Courts Below

In order to collect on its fraud judgment, Standard registered the judgment in Oregon and attempted to garnish the benefits payable by Standard to Saklad under the Master Plating Plan.[6] Saklad claimed that his benefits were partially exempt from garnishment under a state statute which exempts from garnishment "payment in compensation of loss of future earnings". Or. Rev. Stat. § 23.160(1)(j)(C). On three separate occasions, the state trial court denied Saklad's exemption claims on the ground that the state garnishment exemption was preempted by ERISA. *See* App. 6-9.

Saklad appealed the trial court decisions. On March 31, 1993, the Court of Appeals of Oregon reversed the trial court decisions and held that the state garnishment exemption was not preempted by ERISA. *See* App. 1-4.

The Oregon Court of Appeals, like other courts, relied on but misread *Mackey v. Lanier Collections Agency &*

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[6] The judgment was registered in Oregon because Standard is an Oregon domiciliary insurance company headquartered in Portland, Oregon. Saklad's benefits were issued from Oregon.

Service, Inc., 486 U.S. 825 (1988). The Oregon appeals court held that congressional silence concerning garnishment of ERISA welfare benefits "acknowledged and accepted various state practices concerning garnishment, *including the practice of refusing garnishment*". *See* App. 3 (emphasis added). While *Mackey* held that collection of money judgments was a matter left to the States, it did not hold that a State may prohibit the collection of an ERISA judgment won in federal court against a plan participant pursuant to ERISA's exclusive civil enforcement scheme.

The Oregon Court, like many other courts, also misread footnote 12 of *Mackey*, and concluded that a garnishment exemption statute was not preempted unless it singled out ERISA plans for special treatment. Because the Oregon exemption statute did not expressly mention ERISA or ERISA plans, the appellate court held that the state garnishment exemption was not preempted. The Oregon Court, like others, operated under the erroneous belief that *Mackey* altered the "relates to" test of ERISA.

Finally, the Oregon Court incorrectly held that a state garnishment exemption applicable to welfare benefits is not preempted because it does not relate to an ERISA plan, but merely relates to plan benefits.

Standard filed its petition for review with the Supreme Court of Oregon. Review was denied on August 24, 1993.[7]

[7] After the Oregon Supreme Court denied review, Standard filed a separate action against Saklad under ERISA pursuant to § 502(a)(3), seeking to coordinate the benefits payable to Saklad under the Master Plating Plan with the benefits already received by Saklad under the IEE Plan as well as for equitable setoff under federal common law. This action is pending in the United States District Court for the Central District of California.

REASONS FOR GRANTING THE WRIT

A. This Case Presents Important Questions Of Federal Law Concerning The Employee Retirement Income Security Act.

This Court has repeatedly acknowledged the importance of issues arising under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA") with regard to: (1) preemption of state law; (2) the exclusivity of ERISA's civil enforcement scheme; and (3) the uniform regulation of employee benefit plans. *See, e.g., Ingersoll-Rand Company v. McClendon*, 498 U.S. 133 (1990); *FMC Corporation v. Holliday*, 498 U.S. 52 (1990); *Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825 (1988); *Ft. Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). This particular case presents important questions in all of these areas because the Court below misread and misapplied the preemption test as set forth in ERISA. In so doing, the Oregon Court denied an effective remedy to a defrauded ERISA plan, frustrating collection of a judgment won pursuant to ERISA's exclusive civil enforcement scheme, and thus making a sham of the uniform regulation of employee benefits. Moreover, the Oregon Court of Appeals decision is one of numerous cases causing confusion and conflict between various state and federal courts regarding application of the "relates to" test set forth in ERISA.

ERISA contains an express preemption provision which states that ERISA supersedes all State laws that "relate to" any employee benefit plan. 29 U.S.C. § 1144(a). This Court has stated on several occasions that the preemption

provision of ERISA is extremely broad. *See, e.g., Pilot Life*, 481 U.S. 45-46 ("the express pre-emption provisions of ERISA are deliberately expansive"); *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85 (1983) ("the breadth of [29 U.S.C. § 1144(a)'s] pre-emptive reach is apparent . . . ."). Furthermore, because Congress used the phrase "relate to" in its broad sense, this Court has "emphasized that the pre-emption clause is not limited to 'state laws specifically designed to affect employee benefit plans.' " *Pilot Life*, 481 U.S. at 47-48. *Accord, Shaw*, 463 U.S. at 98 (pre-emption clause should not "be interpreted to pre-empt only state laws dealing with the subject matters covered by ERISA—reporting, disclosure, fiduciary responsibility, and the like.")

This Court has also recognized that a primary concern of Congress in enacting ERISA was the uniform regulation of employee benefit plans. Congress used "deliberately expansive" language in ERISA's preemption clause which was "designed to 'establish pension plan regulation as exclusively a federal concern' ". *Pilot Life*, 481 U.S. at 46 (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981)).

Nowhere did Congress more clearly demonstrate its desire for uniform regulation of employee benefit plans than in its enactment of ERISA's detailed civil enforcement scheme. This Court has stated that the civil enforcement scheme "is one of the essential tools for accomplishing the stated purposes of ERISA". *Pilot Life*, 481 U.S. at 52. These detailed provisions constitute "a comprehensive civil enforcement scheme". *Id.* at 54. In order to further the purpose of uniformly regulating employee benefit plans, this Court has held that "[t]he deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of

remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive". *Id.* Thus, states are prohibited from supplementing or detracting from these remedies. *See, e.g., Pilot Life, supra* (state claim for bad faith is preempted); *Metropolitan Life v. Taylor, supra* (state tort and breach of contract claims are preempted); *Ingersoll-Rand v. McClendon, supra* (state wrongful discharge claim preempted by ERISA).

Despite this Court's consistent reasoning regarding the breadth of ERISA preemption, the exclusive nature of ERISA's civil enforcement scheme, and the uniform regulation of employee benefit plans, this Court's decision in *Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825 (1988), has been the subject of conflicting interpretations in federal and state courts. Two such matters are at issue in this case. *First*, courts have split over the extent to which the state laws regarding the collection of money judgments are preempted by ERISA, particularly where they create substantive rights in welfare benefit plan debtors not recognized by ERISA and in conflict with ERISA's civil enforcement scheme. *Compare Iron Workers Pension Fund v. Terotechnology*, 891 F.2d 548 (5th Cir.) *cert. den.* 497 U.S. 1024 (1990) and *CSCAC v. El Capitan Development Co.*, 53 Cal.3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 *cert. den.* 112 S.Ct. 430 (1991) *with* the decision at issue in this case. *Second*, there is substantial confusion over the breadth of the "relates to" test and what type of "express reference" to ERISA plans is necessary for a state law to be preempted by ERISA. *Compare Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9*, ____ F.3d ____, 1993 U.S. App. Lexis 28698 (10th Cir. November 4, 1993) and *Heitkamp v. Dyke*, 943 F.2d 1435 (5th Cir. 1991) *with* the decision at issue in this case.

It is important for the Court to clarify these issues. Numerous state and federal courts, including the Court below, have misread and misapplied ERISA's preemption provision by failing to find state laws preempted even though they "relate to" employee benefit plans. In the case at hand, the Oregon Court held that a state garnishment exemption applicable to ERISA disability benefits was not preempted. If this interpretation of ERISA's preemption provision is allowed to stand, it will result in defrauded employee benefit plans being denied an effective remedy for judgments won pursuant to ERISA's civil enforcement scheme. It will also allow state law, rather than federal law, to govern the viability of ERISA judgments, vitiating ERISA's exclusive civil enforcement scheme and eradicating the uniform regulation of employee benefit plans envisioned by Congress.[8]

B. This Court Should Resolve The Conflict Between The Oregon Court Of Appeals On The One Hand And The Fifth Circuit And The California Supreme Court On The Other Hand Regarding Whether ERISA Preempts A State Law Which Creates Substantive Rights In Third Parties Not Recognized By ERISA And That Conflict With ERISA's Exclusive Civil Enforcement Scheme.

The Court below erroneously preserved a state anti-garnishment exemption from preemption where the state law created substantive rights in third parties which are

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[8] If state garnishment exemptions are not preempted by ERISA, regulation concerning the satisfaction of judgments obtained pursuant to ERISA's exclusive civil enforcement scheme will not be uniform. *Compare* Ind. Code § 34-2-28-1 (no specific garnishment exemption for disability benefits) *with* Col. Rev. Stat. 13-54-104 (limited garnishment exemption for disability benefits) and Fla. Stat. ch. 222.18 (general garnishment exemption for disability benefits).

not recognized by ERISA and which are inconsistent with ERISA's exclusive civil remedy scheme. The decision by the Oregon Court of Appeals is in conflict with decisions by the Fifth Circuit in *Iron Workers Pension Fund v. Terotechnology*, 891 F.2d 548 (5th Cir.) *cert. den.* 497 U.S. 1024 (1990) and the California Supreme Court in *CSCAC v. El Capitan Development Co.*, 53 Cal.3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 *cert. den.* 112 S.Ct. 430 (1991).

In *Mackey v. Lanier Collections*, this Court held that a general state garnishment statute was not preempted. This holding was premised in part on the fact that the state law was merely a procedural mechanism for the collection of money judgments and did not create any substantive rights. The Court noted:

> [U]nder Georgia law (at least), garnishment is a 'procedural' mechanism for the enforcement of judgments. Georgia's statute that provides for garnishment creates no substantive causes of action, no new bases for relief, or any grounds for recovery; the Georgia garnishment law does not create the rule of decision in any case affixing liability. Rather under Georgia law, post-judgment garnishment is nothing more than a method to collect judgments otherwise obtained by prevailing on a claim against the garnishee. See Ga. Code Ann. § 18-4-60 (1982).

Mackey, 486 US at 834, n. 10. In other words, if state garnishment statutes are merely procedural in nature and do not conflict with the substantive provisions of ERISA, they are not preempted under section 514(a) of ERISA. To hold otherwise would mean that ERISA plans and their fiduciaries would have no means of collecting on judgments. *Id.* On the other hand, *Mackey* should not be interpreted to mean that a garnishment exemption statute which creates both procedural and substantive rights, and which conflicts with ERISA's civil enforcement scheme,

is not preempted. In this case, the state statute, rather than being a convenient method to collect a money judgment, actually frustrates an ERISA fiduciary's obligation to recoup monies fraudulently taken from the plan.

Relying on *Mackey*, the Fifth Circuit and the California Supreme Court have held that state laws which created substantive rights in third parties not otherwise recognized by ERISA were preempted. In *Iron Workers* and *El Capitan*, the Fifth Circuit and the California Supreme Court respectively dealt with the issue of whether state statutes creating real property liens in favor of pension plans to assure payment of contributions by the employer were preempted by ERISA. In each case, the court concluded that such a lien created substantive rights not otherwise available under the civil enforcement scheme of ERISA and thus was preempted. In *Iron Workers*, the Fifth Circuit held:

> [T]he lien statutes involved do more than provide remedies for collecting judgments; they create substantive rights . . . . The Private Works Act creates a substantive right against the property owner that is not created by ERISA, and goes beyond being merely a means of enforcing a judgment.

891 F.2d at 555-556. Similarly, in *El Capitan*, the California Supreme Court held:

> [S]ection 3111 cannot be upheld under *Mackey* as it creates a new substantive right against the property of a third party that is not created by ERISA and, thus, goes beyond being a mere means of enforcing a judgment.

811 P.2d at 304.

The decision of the Oregon Court in this case conflicts with these decisions. All three are based on the procedural/substantive distinction enunciated by this Court in

Mackey. *Mackey* allows garnishment statutes in general to survive preemption since they are mere procedural mechanisms to collect money judgments. However, exemptions from a general garnishment statute affect these procedural rights in a substantive manner. This state law exemption creates a substantive right for the plan beneficiary by extending anti-alienation protection to welfare benefits—a limitation that Congress chose only to impose on ERISA pension benefits. *Mackey*, 486 U.S. at 836. As such, the state law is preempted by ERISA. Because the Oregon Court of Appeals decision held otherwise, it directly conflicts with the decisions in *Iron Workers* and *El Capitan* as well as with this Court's decision in *Mackey*.

The state law exemption also obstructs an ERISA plan's right "to sue", which implies a right to collect on money judgments. *Mackey*, 486 U.S. at 832. This frustrates congressional intent that ERISA's civil enforcement scheme be the exclusive means of regulating and enforcing obligations under employee benefit plans. To allow a state to effectively refuse to enforce a judgment obtained pursuant to ERISA's civil enforcement scheme, whether for fraud, overpayment, or subrogation, would give states unfettered discretion to override federal law. The Courts in *Iron Workers* and *El Capitan* understood that the states could not supplement nor detract from ERISA's civil enforcement scheme. Thus, they struck down statutes which provided supplemental substantive enforcement mechanisms to those available to benefit plans under ERISA. By allowing a substantive right which essentially prevents the enforcement of a judgment obtained under ERISA's exclusive civil enforcement scheme, the Oregon Court of Appeals decision directly conflicts with the Fifth Circuit decision in *Iron Workers* and the California Supreme Court decision in *El Capitan*, as well as with this Court's decision in *Mackey*.

This Court should resolve this conflict. To fail to do so will only add to the existing confusion regarding the correct interpretation of *Mackey*, will subject employee benefit plans to inconsistent substantive regulation by the states, and result in the vitiation of the right of plans and their fiduciaries to utilize the civil enforcement scheme set forth in ERISA. While garnishment is a valid area of state concern, it is a matter of federal concern when a state garnishment *exemption* impacts the civil enforcement scheme of ERISA and the right of ERISA plans to sue and collect a money judgment pursuant to that scheme, particularly given the fact that there are millions of welfare benefit plan participants.[9] To alleviate the conflicting decisions in this area, this Court should issue a writ of certiorari.

C. This Court Should Resolve The Conflict Between The Oregon Court of Appeals And The Tenth Circuit As Well As The Confusion And Uncertainty Among State And Federal Courts Regarding What It Means For A State Law To Make "Reference To" ERISA Plans For Preemption Purposes.

The Oregon Court of Appeals erroneously held that a state antigarnishment exemption which was applicable both to ERISA and non-ERISA benefits and plans, was not preempted because the exemption did not single out ERISA plans by "expressly referring" to ERISA. This decision is completely at odds with the recent decision

[9] According to the Amicus Brief of the United States in *Mackey v. Lanier*, focusing only on multiemployer welfare plans (other than life and health insurance plans), the Department of Labor estimated in 1981, that there were over 2,000 such plans covering in excess of six million participants. These figures were tabulated from annual reports filed with the Department of Labor as required by ERISA, §§ 103-104, 29 U.S.C. §§ 1023-1024.

of the Tenth Circuit in *Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9, supra.* These two decisions are the latest in a long line of state and federal court decisions which have propounded conflicting interpretations of ERISA's preemption clause and the breadth of the "relates to" test.

This Court has repeatedly employed a broad definition in determining whether a law "relates to" an employee welfare benefit plan. According to an early ERISA case decided by this Court, a state law "relates to 'a benefit plan . . . if it has a connection with *or* reference to such a plan.' " *Shaw v. Delta Airlines*, 463 U.S. at 96-97 (emphasis added).[10]

Yet, despite a consistent line of authority from this Court, there is widespread confusion over the holding in *Mackey*. This confusion has taken numerous forms. It has arisen in the application of the preemption standard based on a determination of what it means for a state law to "make reference to" ERISA plans. Some courts have concluded that a state law "makes reference to" ERISA plans where it has a decided impact on such plans. *See, e.g., Guidry v. Local No. 9, supra*; *Heitkamp v. Dyke*, 943 F.2d 1435 (5th Cir. 1991). Others hold that a state law does not "make reference to" ERISA plans unless the language of the state law expressly refers to ERISA and/or ERISA plans. *See, e.g.*, the decision rendered by the court below. Still others seem to believe that this Court intended to expand the "relates to" test first set forth in *Shaw*. *See* discussion in *Heitkamp v. Dyke*, 943 F.2d at 1448 n.33 ("The language in *Mackey* is different

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[10] *See also Pilot Life v. Dedeaux*, 481 U.S. at 47; *Ingersoll-Rand Company v. McClendon*, 498 U.S. at 139; *FMC Corp. v. Holliday*, 498 U.S. at 58.

from the language in *Shaw* . . . Some commentators have argued that the language in *Mackey* expands ERISA's preemptive effect beyond that which the Court anticipated in *Shaw*"). It is clear from this confusion that this Court should give additional guidance in this area.

In *Mackey*, this Court struck down a state garnishment exemption law which expressly excepted ERISA plans from garnishment.[11] This Court held that a state law which "makes reference to" and which "singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures, is pre-empted . . . [t]he statute's express reference to ERISA plans suffices to bring it within the federal law's preemptive reach". 486 U.S. at 830. The Court upheld the State's general garnishment procedure statute, which did not expressly refer to ERISA plans but which was applicable to ERISA and non-ERISA benefits, preserving it from preemption under ERISA. The Court distinguished between preemption of the general garnishment statute and the exemption statute which expressly referred to ERISA plans:

> It is not incongruous to find that Ga. Code Ann. § 18-4-20 (Supp. 1987), which provides for garnishment of ERISA welfare benefit plans, escapes pre-emption under ERISA, while striking down § 18-4-22.1—an exception to the general state-law provision—as pre-empted. While we believe that state-law garnishment procedures are not pre-empted by § 514(a), we also conclude that *any* state law which singles out ERISA plans, by express reference, for special treatment is

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[11] The State law at issue in *Mackey* provided as follows:

> Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of [ERISA], shall not be subject to the process or garnishment . . . .

Ga. Code Ann. § 18-4-22.1.

> pre-empted . . . It is this "singling out" that pre-empts the Georgia antigarnishment exception.

486 U.S. at 838 n. 12 (emphasis in original).

Although *Mackey* based its decision on the fact that a state law which "singles out ERISA plans by express reference" is preempted, *id.*, express reference has never been the sole basis for preemption. Unfortunately, footnote 12 of *Mackey* has caused many courts, such as the Court below, to ignore other decisions of this Court regarding preemption. These courts have relied solely on "express reference" as the test for preemption. Both before and after *Mackey*, this Court has found state laws to be preempted even where state laws did not specifically mention ERISA or ERISA plans. For example, in *FMC Corp. v. Holliday*, *supra*, this Court found a state law prohibiting subrogation to have a "reference to" and "connection with" ERISA plans and to be preempted although the state law was generally applicable to ERISA and non-ERISA benefits and did not make express reference to ERISA or ERISA plans. 498 U.S. at 59 ("Pennsylvania's antisubrogation law has a 'reference' to benefit plans . . . [and it] also has a 'connection' to ERISA benefit plans").

The decision below represents an incorrect reading of this Court's opinions in *Mackey* and *FMC*. The Oregon statute exempts "[a] payment in compensation of loss of future earnings" from garnishment. Although the statute applies to disability benefits payable under an employee welfare benefit plan, the appellate court held that the statute was not preempted because "[t]he only provision is that the state garnishment law cannot single out ERISA plans for special treatment". In other words, because the state law does not expressly mention ERISA plans and single them out for special treatment, even though it clearly regulates both ERISA and non-ERISA plans, in

the view of the Oregon Court of Appeals, the state law is not preempted. Not only does this holding misapply *Mackey*, but it misapplies and fails to recognize that the Oregon statute at issue is very similar to the Pennsylvania statute in *FMC*. In *FMC*, the statute did not specifically refer to ERISA or ERISA plans, but rather was a general statute applicable to both ERISA and non-ERISA plans.[12]

The Oregon Court of Appeals decision conflicts with the recent decision of the Tenth Circuit in *Guidry*, *supra*.[13] In *Guidry*, the union sought to garnish certain pension benefits after the benefits were paid to Guidry. Among other things, Guidry argued that the benefits were exempt from garnishment under a state statute which placed a cap on the amount of a debtor's "earnings" which could be subjected to garnishment. Like Oregon, the state law at issue in *Guidry* applied to employee benefits, defining "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, avails of any pension or retirement benefits,

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[12] Section 1720 of Pennsylvania's Motor Vehicle Financial Responsibility Law, 75 Pa. Cons. Stat. § 1720 (1987) states:

> In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to . . . benefits . . . payable under section 1719.

Section 1719 refers to benefit payments by "[a]ny program, group contract or other arrangement".

[13] The Tenth Circuit decision in *Guidry* is an appeal following a remand by this Court in *Guidry v. Sheet Metal Workers Nat'l. Pension Fund*, 493 U.S. 365 (1991). This Court ruled that the anti-alienation provisions of ERISA applicable to pension plans superseded the union's claim for a constructive trust on benefits payable to Guidry because of Guidry's criminal misconduct against the union.

or deferred compensation plan". Col. Rev. Stat. 13-54-104. Although this statute did not expressly mention ERISA or ERISA plans, the Tenth Circuit apparently believed that the statute "expressly refer[red] to" ERISA plans because it implicitly encompassed such plans. (1993 U.S. App. Lexis 28698, at *38.) Citing *Mackey*, the Tenth Circuit held:

> The Colorado statute 'relates to' employee benefit plans because it expressly refers to such plans . . . [T]he garnishment exemption is preempted by ERISA 514(a) because it singles out ERISA benefits for special treatment. It is this singling out that preempts the Colorado anti-garnishment exception.

(*Id.* at *39-40.)

The Oregon holding also conflicts with decisions in several other courts. For example, in *Heitkamp v. Dyke*, 943 F.2d 1435 (5th Cir. 1991), the Fifth Circuit determined that a state statute "relate[d] to" ERISA plans where its language "encompassed" such plans. The case arose where a bankruptcy trustee objected to the exemption of a debtor's pension interest from the bankruptcy estate. The debtor's exemption was based on a state law which exempted from attachment, execution, and seizure for the satisfaction of debts the debtor's interest in any "stock bonus, pension, profitsharing, or similar plan". Citing *Mackey*, the Fifth Circuit noted that "absent an applicable exception, ERISA automatically preempts all state laws which specifically refer to ERISA benefit plans". *Id.* at 1448. Although the state statute did not expressly mention ERISA or ERISA plans, the Fifth Circuit held that the statute was "a state law which specifically refers to ERISA benefit plans", which conclusion was based on the Court's observation that the statutory exemption "clear-

ly encompasses ERISA-qualified benefit plans".[14] *Id. See also In re Shaker*, 137 B.R. 930 (W.D. Wis. 1992) (although the fact that a state exemption statute makes no express reference to ERISA or the Internal Revenue Code "could provide a strong argument that the [state] statute does not therefore 'relate to' ERISA in the sense prohibited by *Mackey* and its progeny . . . ERISA's broad preemptive reach is not merely triggered by an express reference to ERISA"); *Donald H. Hartvig, Inc. v. Kellas*, 113 B.R. 673, 678 (D. Ore. 1990) ("[e]ven though *Mackey* relied on an express reference to ERISA plans, the absence of an express reference does not necessarily mean the statute is not preempted").

Unfortunately, other courts have not followed the reasoning in *Guidry*, *Heitkamp*, and similar decisions. *See, e.g.*, *Plumber's Local 458 Holiday Vacation Fund v. Howard Immel, Inc.*, 151 Wis.2d 233, 445 N.W.2d 43 (1989) ("Wisconsin's construction lien law is a general statute without any specific reference to ERISA obligations", and thus is not preempted); *In re Bartlett*, 116 B.R. 1015, 1023 (S.D. Iowa 1990) ("[the Iowa pension exemption statute] cannot be construed as making any reference to ERISA or to attendant IRS provisions. Thus, it is not preempted by ERISA . . . ."); *In re Garvin*, 129 B.R. 598 (S.D. Ind. 1991) (noting that the courts are split over whether ERISA preempts state exemption statutes dealing with pension plans, the court held that a state law which does not expressly mention ERISA "makes no reference to ERISA whatsoever"); *In re Volpe*, 100 B.R. 840, 848 (W.D. Tex.)

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[14] Because ERISA does not preempt other *federal* laws, the Fifth Circuit held that the state statute was "saved" from preemption because the state law enforced federal goals under bankruptcy law. 943 F.2d at 1449-1450.

aff'd. 943 F.2d 1451 (5th Cir. 1991) (state law which makes passing mention of ERISA "makes reference to" ERISA under *Mackey*, but does not "have reference to" ERISA plans under *Shaw* because it does not purport to regulate the terms and conditions of an employee benefit plan nor does it affect the relationship between the principal ERISA entities). *Compare In re Martinez*, 107 B.R. 378, 380 (S.D. Fla. 1989) (even though a state exemption statute mentions the Internal Revenue Code provisions under which an ERISA plan is qualified, the state law is not preempted unless it creates a conflict between state law and the federal scheme of ERISA) *with Pitrat v. Garlikov*, 947 F.2d 419, 427 (9th Cir. 1991) ("by naming those sections of the I.R.C. which designate ERISA-qualified plans [a state exemption statute] clearly makes reference to ERISA plans" and is preempted).

This Court decided in *Patterson v. Shumate*, 112 S.Ct. 2242 (1992) that ERISA's prohibition of alienation of qualified pension plan benefits allows a debtor's pension plan interest to be excluded from the bankruptcy estate, thus mooting much of the preemption issue as it applies in the bankruptcy context with respect to ERISA *pension* plans. However, outside the bankruptcy context, preemption issues with respect to pension plans still linger. *See, e.g., Guidry, supra.* Furthermore, *Patterson* does not resolve any issues with respect to ERISA *welfare* plans and does not resolve the preemption issue raised herein. This issue arises in numerous contexts involving judgments awarded to welfare benefit plans pursuant to ERISA's civil enforcement scheme in areas such as fraud, mistaken overpayment, and subrogation.

These conflicting holdings demonstrate the ongoing confusion as to the breadth of ERISA's preemption clause and the "relates to" test. The confusion created by the

Oregon Court of Appeals decision and others destroys the full force and effect of ERISA's exclusive civil enforcement scheme by subjecting ERISA plans to a variety of conflicting court decisions, state and federal, regarding the breadth of the "relates to" test of ERISA. This Court should clarify the "relates to" test and the breadth of preemption and set right the misinterpretations of *Mackey*.

D. This Court Should Resolve the Conflict Between the Oregon Court Of Appeals And The Tenth Circuit Regarding Whether A State Garnishment Exemption "Relates To" An Employee Benefit Plan, Not Just Employee Benefits, And Is Preempted.

The Oregon Court of Appeals effectively held that a state garnishment exemption is not preempted because it never "relates to" an employee benefit plan, but only "relates to" employee benefits. According to the Oregon Court, this holding applies even where benefits have not yet been paid to the plan participant. The Tenth Circuit, on the other hand, held in *Guidry*, *supra*, that a state garnishment exemption is preempted because it "relates to" employee benefit plans, even where plan benefits are already paid and received by the plan participant.

The Oregon Court of Appeals stated that "[w]hether or not a check is garnished after administrative procedures are complete has nothing to do with a 'plan' . . . ." App. 4. In *Ft. Halifax*, this Court held that ERISA preemption only applies to state laws which "relate to" ERISA *plans*, and not to laws which only "relate to" plan *benefits*. According to the Oregon Court, a garnishment exemption statute can never "relate to" an ERISA plan because the garnishment process only "relates to" plan benefits. The Oregon Court apparently believed that once a plan calculates the amount of benefits due a participant,

an exemption protecting those benefits from garnishment no longer "relates to" the benefit plan. What the Oregon Court failed to recognize was that the plan paying benefits to Saklad was not the only plan affected by the exemption. Rather, the plan which had previously been defrauded by Saklad was also affected by the exemption, because the judgment it won pursuant to ERISA's civil enforcement scheme, which it sought to satisfy in Oregon, was completely frustrated by the exemption.

The Oregon decision directly conflicts with the Tenth Circuit's decision in *Guidry*. The issue in *Guidry* was whether the union could garnish plan benefits which were already paid and received by the participant. The Tenth Circuit held that a state garnishment exemption was preempted by ERISA. Responding to Guidry's argument that the statute did not "relate to" ERISA plans because the plan benefits were already paid out, the Tenth Circuit held:

> [T]he fact that this case is about paid benefits, and not about benefits in the plan, does not take the Colorado statute out of ERISA 514(a). A statute relating to benefits paid and received is a state law relating to an employee benefit plan.

(1993 U.S. App. Lexis 28698, at *40.) *But see Eickhoff v. Eickhoff*, 1993 Ga. Lexis 713 (Ga. October 25, 1993) (benefits are not protected by ERISA once they are received by the beneficiary).

The conflict between these two decisions is clear: while the Tenth Circuit holds that a state garnishment exemption "relates to" ERISA plans and is preempted even where benefits have already been paid to the participant, the Oregon Court of Appeals holds that a state garnishment exemption never "relates to" an ERISA plan. If the Oregon interpretation is allowed to prevail, state law

will effectively preempt federal law by eradicating ERISA's exclusive civil enforcement scheme, frustrating the attempts of defrauded plans to satisfy judgments won pursuant to that scheme. This is exactly the result Congress sought to avoid in enacting ERISA. Federal law, not state law, was intended to be supreme.

CONCLUSION

For the foregoing reasons, the petition should be granted and this Court should issue a writ of certiorari to review the decision and judgment of the Court of Appeals of the State of Oregon.

Respectfully submitted,

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November 18, 1993

APPENDICES

APPENDIX A

Filed: March 31, 1993

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

STANDARD INSURANCE COMPANY,

Respondent,

v.

JEROME W. SAKLAD,

Appellant.

(9108-05506; CA A73687)

Appeal from Circuit Court, Multnomah County.

Lee Johnson, Judge. (April 2, 1992, Order)

Gerald R. Pullen, Judge *pro tempore.* (January 27, 1992, Order)

Argued and submitted January 13, 1993.

Christopher F. McCracken, Portland, argued the cause for appellant. With him on the briefs were Stuart C. Harris and Davis Wright Tremaine, Portland.

James Ray Streinz, Portland, argued the cause for respondent. With him on the brief were Russell B. Weed and McEwen, Gisvold, Rankin & Stewart, Portland.

Before Deits, Presiding Judge, and Riggs and Durham, Judges.

RIGGS, J.

Defendant, judgment debtor, appeals from three orders denying three claims that his disability benefits are exempt from garnishment under ORS 23.160(1)(j)(C). At issue is whether the Employee Retirement Income Security Act (ERISA) preempts a state law which exempts proceeds

of disability benefits from garnishment. 29 USC § 1144(a). He also argues that his disability benefits are exempt under ORS 743.050, which exempts from garnishment proceeds of a health insurance policy. Finally, he argues that Standard engaged in a prohibited transaction under ERISA by garnishing the benefits paid by an ERISA plan for which it was also a fiduciary. We reverse and remand.

Defendant was a beneficiary of two disability policies issued by plaintiff. He defrauded plaintiff of over $250,000 under the first policy but was entitled to benefits under the second policy. After winning a judgment against defendant for fraud, plaintiff sought to garnish the benefits paid under the second policy. Plaintiff registered a judgment against defendant and sought to satisfy that judgment through a writ of continuing garnishment which garnished defendant's monthly disability payments under the second policy. The second policy was administered by an ERISA welfare plan for which plaintiff was a fiduciary.[1] The ERISA welfare plan filed three certificates of garnishee. In response to each certificate of garnishee, defendant filed a claim of exemption under ORS 23.160(1)(j)(C), which exempts from garnishment "payment in compensation of loss of future earnings." The court denied all three claims of exemption, holding that ORS 23.160(1)(j)(C) is preempted by ERISA.

With certain exceptions not applicable to this case, § 514(a) of ERISA preempts all state laws that "relate to any employee benefit plan." 29 USC § 1144(a). The

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[1] "Welfare plans" refers to plans providing health and disability insurance and other benefits with the exception of pension benefits. 29 USC § 1002(1). ERISA specifically prohibits garnishment of pension benefits, 29 USC § 1056(d), but is silent concerning the garnishment of welfare benefits.

supreme Court has repeatedly stated that ERISA's preemptive reach is broad. *See, e.g. Shaw v. Delta Air Lines, Inc.*, 463 US 85, 97, 103 S Ct 2890, 77 L Ed 2d 490 (1983). But that reach is not boundless.

Plaintiff argues that Oregon's anti-garnishment law, ORS 23.160(1)(j)(C), is preempted by ERISA under *Mackey v. Lanier Collections Agency*, 486 US 825, 100 L Ed 836, 108 S Ct 2182 (1988). *Mackey* involved two different Georgia laws. The first law prohibited garnishment of the benefits of ERISA welfare plans while permitting garnishment of benefits from non-ERISA plans. The first law was preempted because it gave differential treatment to ERISA plans. Specific reference to ERISA in a state law invariably leads to preemption. 486 US at 829. In contrast, ORS 23.160(1)(j)(C) does not treat ERISA plans differently from non-ERISA plans and so is not automatically preempted.

The second law in *Mackey* was a general garnishment statute which, once the first law was struck down, authorized garnishment of all employee welfare benefits. The Supreme Court held that congressional silence concerning garnishment of employee welfare plan benefits shows that Congress "acknowledged and accepted" the practice of garnishing ERISA welfare plan benefits under general garnishment statutes. 486 US at 837. Plaintiff argues that by "acknowledging and accepting the practice" Congress intended ERISA plan benefits to be subject to garnishment. Plaintiff misreads *Mackey*. It does not follow that by acquiescing in garnishment Congress mandated that practice. We understand *Mackey* to mean that the congressional silence concerning garnishment of ERISA welfare plans acknowledged and accepted various state practices concerning garnishment, including the practice of refusing garnishment. The only provision is that the state garnishment law cannot single out ERISA plans for special treatment.

Plaintiff next argues that:

> "preemption of ORS 23.160(1)(j)(C) provides for uniformity of treatment of ERISA benefits. If the Oregon statute is not preempted, disability benefits paid pursuant to an ERISA plan would be exempt in Oregon, but the same benefits would not be exempt in Georgia based upon the *Mackey* case."

Plaintiff incorrectly implies that ERISA mandates uniform treatment of ERISA *benefits*. ERISA mandates uniform treatment of ERISA *plans*.

> "ERISA's preemption provision does not refer to state laws relating to 'employee benefits' but to state laws relating to 'employee benefit *plans*.' * * * The words 'benefit' and 'plan' are used separately throughout ERISA, and nowhere in the statute are they treated as the equivalent of one another." *Fort Halifax Packing Co. v. Coyne*, 482 US 1, 7-8, 96 L Ed 2d 1, 107 S. Ct 2211 (1986).

"Benefit plans" refers to a set of administrative procedures including claims processing, benefit calculation, and pay out. 482 US at 9. Whether or not a check is garnished after administrative procedures are complete has nothing to do with a "plan" as that term was defined in *Fort Halifax*. The benefit/plan distinction made in *Fort Halifax* explains why *Mackey v. Lanier Collection Agency*, *supra*, permitted Georgia to regulate garnishment of benefits even though state regulation meant that ERISA benefits would be garnished via procedures that vary from state to state. If uniformity of garnishment procedures was a central regulatory concern of ERISA, *Mackey* would not have left garnishment of disability benefits up to the states.

Due to our disposition of the preemption issue, we do not reach defendant's other assignments of error.

Reversed and remanded.

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF OREGON

STANDARD INSURANCE COMPANY

Respondent/Petitioner

v.

JEROME W SAKLAD

Appellant/Respondent

AMERICAN COUNCIL OF LIFE INS

Amicus Curiae

ORDER
DENYING REVIEW

CA A73687
SC S40211

The Court has considered the petition for review and orders that it be denied.

DATE: August 24, 1993.

/S/ WALLACE P. CARSON, JR.
WALLACE P. CARSON, JR.
CHIEF JUSTICE

APPENDIX C

[Dated: January 27, 1992]

CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STANDARD INSURANCE COMPANY,

Plaintiff,

v.

JEROME W. SAKLAD,

Defendant.

Case No. 9108-05506

ORDER ON CLAIM OF EXEMPTION TO WRIT OF GARNISHMENT

This matter having come before the Court on plaintiff's Motion for Review of Defendant's Claim of Exemption to a garnishment by plaintiff of certain disability benefits being paid to defendant by Standard Insurance Company, and the Court having reviewed the file and a letter from the defendant dated January 6, 1991, and having heard argument on behalf of plaintiff, it is hereby

ORDERED that defendant's claim of exemption of the entire amount of disability benefits is denied on the grounds that any Oregon exemption for disability benefits is pre-empted by federal law, specifically the Employee Retirement Income Security Act of 1974; and it is

FURTHER ORDERED that the sum of $400 of the funds garnished is exempt as a one-time exemption under ORS 23.160(1)(k), which will not be available to defendant on any further garnishments by plaintiff; and it is

FURTHER ORDERED that of the funds deposited into Court by Standard Insurance Company pursuant to the garnishment and the exemption claim thereon that the Clerk of the Court is directed to pay $400 of these funds to the defendant, Jerome W. Saklad, and to pay the rest to plaintiff, Standard Insurance Company.

Dated this 27 day of January, 1992.

/S/ Gerald R. Pullen
CIRCUIT COURT JUDGE PRO TEM

Presented by:

James Ray Streinz, OSB 79410

CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STANDARD INSURANCE COMPANY,

Plaintiff,

vs.

JEROME W. SAKLAD,

Defendant.

Case No. 9108-05506

ORDER ON SECOND CLAIM OF EXEMPTION TO THE WRIT OF GARNISHMENT

This matter having come before the Court for hearing on March 5, 1992, on defendant's Claim of Exemption from a garnishment filed by plaintiff, this being defendant's Second Claim of Exemption, and the Court having reviewed the file, the Memorandum in Opposition to Claim of Exemption filed by Standard Insurance Company, and having heard the arguments of counsel for plaintiff and defendant, it is hereby

ORDERED that defendant's Claim of Exemption, including the claims based upon ORS 23.160(1)(j)(C) and ORS 743.050, is denied; and it is

FURTHER ORDERED that any funds deposited into Court by Standard Insurance Company pursuant to the garnishment and the exemption claim shall be returned to Standard Insurance Company as Plaintiff by the Clerk of the Court.

Dated this 2 day of April, 1992.

/S/ Lee Johnson
CIRCUIT COURT JUDGE

Presented by:
James Ray Streinz, OSB 79410

CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STANDARD INSURANCE COMPANY,

Case No. 9108-05506

Plaintiff,

ORDER ON THIRD CLAIM OF EXEMPTION TO WRIT OF GARNISHMENT

vs.

JEROME W. SAKLAD,

Defendant.

This matter having come before the Court for hearing on May 1, 1992, on defendant's claim of exemption from a garnishment filed by plaintiff, this being defendant's Third Claim of Exemption, and the Court having reviewed the file, the Memorandum in Opposition to Claim of Exemption filed by Standard Insurance Company, the Memorandum in Support of Claim of Exemption filed by defendant, and having heard the arguments of counsel for plaintiff and defendant, it is hereby

ORDERED that Defendant's Claim of Exemption is denied, specifically including each of the separate arguments raised in Defendant's Memorandum in Support of Claim of Exemption; and it is

FURTHER ORDERED that any funds deposited into Court by Standard Insurance Company pursuant to the garnishment and the exemption claim shall be returned to Standard Insurance Company as plaintiff by the Clerk of the Court.

Dated this 1 day of May, 1992.

/S/ Lee Johnson
CIRCUIT COURT JUDGE

APPENDIX D

[Dated: May 8, 1991]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STANDARD INSURANCE COMPANY, an Oregon corporation Plaintiff, v. JEROME W. SAKLAD, an individual, Defendant.	CASE NO. CV89-4048 RG(Tx) FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the testimony and documentary evidence presented at trial, this Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Standard is, and at the time of the filing of this action was, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in the State of Oregon.

2. Saklad is, and at the time of the filing of this action was, a citizen of the United States domiciled in the State of California, residing in the County of Ventura.

3. Effective February 1, 1974, Standard issued Group Insurance Policy No. 330322 (the "IEE Policy") to Industrial Electronics Engineers, Inc. ("IEE"), providing long term disability income insurance coverage to persons insured thereunder.

4. The IEE Policy provided benefits pursuant to an employee benefit plan established and maintained by IEE subject to and governed by the terms of the Employee Retirement Income and Security Act ("ERISA") [29 U.S.C. Sections 1001 *et seq.*].

5. On May 1, 1978, Saklad became employed by Souriau, Inc. ("Souriau") as its marketing manager.

6. After becoming employed by Souriau, Saklad completed Standard's Group Insurance Enrollment Card for coverage under the IEE Policy.

7. Saklad became insured under the IEE Policy.

8. Under the IEE Policy, long term disability income benefits were payable to those covered employees who became totally disabled as defined in the IEE Policy and who otherwise complied with the terms and provisions of the IEE Policy.

9. Long term disability income benefits under the IEE Policy were payable in the amount of 66⅔% of the first $3,000 of the covered employee's basic monthly earnings, reduced by defined "Deductible Benefits."

10. The IEE Policy contained a one-month elimination period during which no benefits accrued.

11. During the elimination period and for the first 24 months thereafter, long term disability income benefits were payable under the IEE Policy only if the covered employee was unable to perform the substantial and material acts necessary to work with reasonable continuity in his regular occupation. Thereafter, benefits were payable only if the covered employee was unable to perform the substantial and material acts necessary to work with reasonable continuity in an occupation in which he might be reasonably expected to engage in view of his physical

capacity, his education, training or experience, and his station in life.

12. Also under the IEE Policy, no long term disability income benefits were payable for *any* period of time during which the covered employee was engaged in any occupation, work or employment for wage or profit unless such occupation, work or employment was part of an Approved Rehabilitation Program as defined under the IEE Policy, and approved in writing by Standard.

13. Saklad submitted a claim for long term disability income benefits under the IEE Policy, which was received by Standard on October 29, 1979.

14. In connection with his claim for long term disability income benefits under the IEE Policy, Saklad represented to Standard that he was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems, including pericarditis.

15. In connection with his claim for long term disability income benefits under the IEE Policy, Saklad further represented to Standard that he was not engaged in any occupation, work or employment for wage or profit.

16. In the case of a claim for total disability, Section 6.B. of the IEE Policy required the covered employee to furnish written proofs of continuance of total disability at intervals reasonably required by Standard.

17. Saklad signed and submitted to Standard written statements representing that he was disabled and not working on or about the following dates: October 17, 1979; February 5, 1980; June 27, 1980; August 22, 1980; January 6, 1981; February 25, 1981; June 1, 1981; September 6, 1981; and October 28, 1982.

18. In addition, Saklad made other written representations to Standard representing that he remained disabled and was not working on or about the following dates: January 3, 1981; August 6, 1981; December 9, 1981; September 20, 1982; November 1, 1982; September 19, 1983; October 2, 1983; March 22, 1984; and November 10, 1984.

19. The representations made by Saklad as described in paragraphs 14 through 18 above were false. The true facts were that Saklad was not totally disabled as he was engaged in an occupation, work or employment for wage or profit.

20. Saklad made the representations described in paragraphs 14 through 18 above with knowledge of their falsity.

21. Saklad made the representations described in paragraphs 14 through 18 above intending to induce Standard to act in reliance thereon.

22. Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad for the period August 24, 1979, through December 23, 1984.

23. Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad in the mistaken belief that Saklad was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems and was not engaged in any occupation, work or employment for wage or profit.

24. Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad in justifiable reliance upon Saklad's representations that he was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems and was not

engaged in any occupation, work or employment for wage or profit.

25. At the time Saklad made the representations that he was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems and was not engaged in any occupation, work or employment for wage or profit, and at the time Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad, Standard believed Saklad's representations to be true. Had Standard known of the falsity of Saklad's representations, Standard would not have approved Saklad's claim for long term disability income benefits under the IEE policy nor would it have paid monthly benefits to Saklad.

26. The total amount of monthly benefits paid by Standard to Saklad for the period January 1, 1980, through December 23, 1984, was $117,234.

27. On September 20, 1982, Saklad wrote to Standard indicating that his doctors had advised him to leave the Southern California area for a warm, dry climate with clean air. In that letter, Saklad raised the subject of settling his claim for long term disability income benefits under the IEE Policy for a lump sum settlement.

28. On November 1, 1982, Saklad wrote to Standard indicating that at that time he no longer desired a lump sum settlement.

29. On September 19, 1983, Saklad wrote to Standard, again raising the possibility of a lump sum settlement and his desire to relocate to a different climate.

30. Standard responded to Saklad's requests for a lump sum settlement by discouraging settlement and advising Saklad to obtain the advice of counsel.

31. On October 2, 1983, Saklad wrote to Standard indicating that he had obtained the advice of counsel and that he desired a lump sum settlement.

32. On March 22, 1984, Saklad again wrote to Standard reiterating his request for a lump sum settlement and stating, "My doctors admit there will not be a reversal of my problems. My damage is permanent, so is my disability."

33. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad represented to Standard that he was totally disabled under the terms of the IEE Policy.

34. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad further represented to Standard that his total disability was on-going.

35. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad further represented to Standard that he was not engaged in any occupation, work or employment for wage or profit.

36. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad further represented to Standard that he did not intend to engage in any occupation, work or employment for wage or profit in the future.

37. The representations made by Saklad as described in paragraphs 33 through 36 above were false. The true facts were that Saklad was not totally disabled as he had been, was and was planning to continue to be engaged in an occupation, work or employment for wage or profit.

38. Saklad made the representations described in paragraphs 33 through 36 above with knowledge of their falsity.

39. Saklad made the representations described in paragraphs 33 through 36 above intending to induce Standard to act in reliance thereon.

40. On or about December 7, 1984, Standard and Saklad entered into an Accord and Satisfaction Agreement in final settlement of Saklad's claim for disability benefits under the IEE Policy.

41. On December 24, 1984, Standard paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement.

42. Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement in the mistaken belief that Saklad was totally disabled under the terms of the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

43. Standard would not have entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement except for Standard's mistaken belief that Saklad was totally disabled under the terms of the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

44. Saklad was aware, or should reasonably have been aware, of Standard's mistaken belief that Saklad was totally disabled under the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

45. Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement in justifiable reliance on Saklad's representations that he was totally disabled under the terms of the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

46. On August 24, 1987, Standard received from Saklad a claim for long term disability income benefits under another policy of group long term disability income insurance, this one issued to The Master Plating, Inc. (the "Master Plating Policy").

47. Master Plating was a family business, owned and operated by members of the Saklad family.

48. On a Long Term Disability Claim Employer's Statement signed by Saklad on August 17, 1987, and submitted by Saklad to Standard in connection with his 1987 claim for benefits under the Master Plating Policy, Saklad gave January 1980 as the date he was employed by Master Plating.

49. Also in connection with his 1987 claim for benefits under the Master Plating Policy, on August 18, 1987,

Saklad signed and submitted to Standard a Long Term Disability Claim Employee's Statement indicating that during the period January 1980, through November 1985, Saklad was employed as a sales and marketing vice president, with duties of outside sales and product marketing at a salary of $650 per week.

50. In 1988, Saklad submitted another claim for long term disability income benefits under the Master Plating Policy.

51. In connection with Saklad's 1988 claim for benefits under the Master Plating Policy, on February 11, 1988, Saklad signed and submitted to Standard a Long Term Disability Claim Employee's Statement that stated that he was employed as vice president of sales and marketing from November 1980, through November 1985, with duties of outside sales and marketing at a salary of $650 per week.

52. In connection with Saklad's 1988 claim for benefits under the Master Plating Policy, Standard contacted Max Van daaleen Wetters, vice president of Master Plating, who confirmed in a telephone conversation that Saklad was employed by Master Plating in January 1980.

53. Also in connection with his 1988 claim for benefits under the Master Plating Policy, Saklad provided Standard with a copy of his resume which stated that he was employed from 1980 to 1985 as vice president, sales at Master Plating at a salary of $24,000 to $36,000 per year.

54. Also in connection with his 1988 claim for benefits under the Master Plating Policy, Saklad submitted to Standard a Long Term Disability Claim Employer's Statement signed by Claudette LeMay, Office Manager of Master Plating, that indicated that Saklad was employed by Master Plating in January 1980.

55. In February 1989, Saklad made another claim for long term disability income benefits under the Master Plating Policy.

56. In connection with his 1989 claim for benefits under the Master Plating Policy, on February 11, 1989, Saklad signed and submitted to Standard a Long Term Disability Claim Employee's Statement that indicated that he was employed from November 1980, through November 1985, as a vice president of sales and marketing, with duties of outside sales and marketing at a salary of $650 per week.

57. In connection with his 1989 claim for benefits under the Master Plating Policy, Saklad submitted a Long Term Disability Claim Employer's Statement indicating that Saklad was employed by Master Plating on January 1, 1980.

58. In light of this new information, Standard commenced an investigation to determine whether any false statements, misrepresentations or omissions had been made by Saklad in connection with his claim for long term disability income benefits under the IEE Policy or the Accord and Satisfaction Agreement.

59. Saklad was engaged in an occupation, work or employment for wage or profit during the period that Standard paid him benefits under the IEE Policy.

60. Saklad performed sales and marketing, management and various other services for Master Plating from at least January 1, 1980, through 1984 and beyond.

61. Saklad was compensated for services he performed for Master Plating during the period that Standard paid him benefits under the IEE Policy.

62. At times, Saklad was compensated for the services he performed for Master Plating in the form of a weekly check payable to Saklad personally.

63. At other times, Saklad was compensated for the services he performed for Master Plating in the form of a weekly check payable to an entity known as the Marilyn Morgan Company.

64. Marilyn Morgan is a name that has been used by Saklad's present wife.

65. It is most probable that Marilyn Morgan Company never provided any services to Master Plating, and the checks made payable to Marilyn Morgan Company by Master Plating were for the purpose of compensating Saklad for services he performed for Master Plating.

66. Saklad also participated in other work and employment, including activities connected with an entity known as The Palma Properties, during the period that Standard paid him long term disability income benefits under the IEE Policy.

67. Even though Saklad represented to Standard that he was not working during the period that Standard paid him long term disability income benefits under the IEE Policy, Saklad represented to others, including health and life insurers, that he was working during that period in order to obtain insurance coverage and benefits.

68. Saklad did not tell Standard that he was engaged in any occupation, work or employment for wage or profit during the period that Standard paid long term disability income benefits to Saklad under the IEE Policy.

69. Saklad did not tell Standard that he was performing services for Master Plating during the period that

Standard paid him long term disability income benefits under the IEE Policy.

70. Saklad did not tell Standard that he was compensated for the services he performed for Master Plating during the period that Standard paid him benefits under the IEE Policy.

71. Saklad did not tell Standard that he was engaged in other work and employment, including activities connected with an entity known as The Palma Properties, during the period that Standard paid him long term disability income benefits under the IEE Policy.

72. None of Saklad's activities was ever approved by Standard in writing or otherwise as an Approved Rehabilitation Program under the IEE Policy.

CONCLUSIONS OF LAW

1. Any and all findings of fact included in the Conclusions of Law are hereby adopted as part of the Findings of Fact. Any and all conclusions of law included in the Findings of Fact are hereby adopted as part of the Conclusions of Law.

2. This action arises under the provisions of ERISA, 29 U.S.C. Sections 1001 *et seq.*, and is subject to the jurisdiction of this Court pursuant to 28 U.S.C. Section 1331.

3. In addition, the matter in controversy exceeds the sum of $50,000, exclusive of interest and costs, and this action therefore is further subject to the jurisdiction of this Court pursuant to 28 U.S.C. Section 1332(a)(1).

4. Venue properly lies in the Central District of California pursuant to 28 U.S.C. Sections 1391(a) and (b).

5. Under the IEE Policy, Saklad was not entitled to the long term disability income benefits paid to Saklad by Standard during the period January 1, 1980, through December 23, 1984.

6. Standard has been damaged in the sum of $117,234 in that Standard paid long term disability income benefits to Saklad during the period January 1, 1980, through December 23, 1984, under a mistake of fact.

7. Standard has been damaged in the sum of $117,234 in that Standard paid long term disability income benefits to Saklad during the period January 1, 1980, through December 23, 1984, in justifiable reliance upon fraudulent misrepresentations made by Saklad.

8. It would be unjust and inequitable to allow Saklad to retain the long term disability income benefits paid to Saklad by Standard during the period January 1, 1980, through December 23, 1984.

9. Standard is entitled to the return of all benefits paid to Saklad under the IEE Policy during the period January 1, 1980, through December 23, 1984, in the amount of $117,234, plus interest at the legal rate.

10. Prejudgment interest on said sum of $117,234 through April 19, 1991, is in the amount of $124,043.

11. Saklad was not entitled to the $80,000 paid to him by Standard under the Accord and Satisfaction Agreement.

12. Standard has been damaged in the sum of $80,000 in that Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement under a mistake of fact.

13. Standard has been damaged in the sum of $80,000 in that Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement in justifiable reliance upon fraudulent misrepresentations made by Saklad.

14. It would be unjust and inequitable to allow Saklad to retain the $80,000 paid by Standard pursuant to the Accord and Satisfaction Agreement.

15. Standard is entitled to rescind the Accord and Satisfaction Agreement.

16. Standard is entitled to the return of the $80,000 paid to Saklad pursuant to the Accord and Satisfaction Agreement, plus interest at the legal rate from and after December 24, 1984.

17. Prejudgment interest on said sum of $80,000 through April 19, 1991, is in the amount of $45,881.

18. Judgment on the Complaint shall be entered in Standard's favor and against Saklad.

19. Standard shall be awarded the sum of $367,158, plus post judgment interest at the legal rate.

20. Standard shall recover its costs of suit herein.

21. Judgment shall be entered as provided herein.

/S/ Richard A. Gadbois, Jr.
RICHARD A. GADBOIS, JR.
United States District Judge

DATED: May 8, 1991

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

STANDARD INSURANCE COMPANY, an Oregon corporation Plaintiff, v. JEROME W. SAKLAD, an individual, Defendant.	CASE NO. CV 89-4048 RG (Tx) JUDGMENT THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)

This action came on for trial before the Court, the Honorable Richard A. Gadbois, Jr., District Judge, Presiding, on April 25 and 30, and on May 1 and 2, 1991. The issues having been duly tried, findings of fact and conclusions of law and an Order for Judgment having been filed on May 8, 1991,

IT IS ORDERED AND ADJUDGED that the plaintiff Standard Insurance Company recover of the defendant Jerome W. Saklad the sum of $367,158, with interest thereon at the rate of 6.07% as provided by law from the date of this Judgment, and its costs of suit in the amount of $_____.

DATED: May 28, 1991

/S/ Richard A. Gadbois, Jr.
Honorable Richard A. Gadbois, Jr.
Judge of the United States District Court

APPENDIX E

ERISA, § 502(a), 29 U.S.C. § 1132(a)

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (B) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (1) of this section.

APPENDIX F

ERISA, § 514(a), 29 U.S.C. § 1144(a)

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

APPENDIX G

Or. Rev. Stat. § 23.160(1)(j)(C)

23.160 Leviable property generally; selectable exemptions. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or the agent of the judgment debtor at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, except as provided in ORS 23.220, shall be exempt from execution:

. . .

(j) The debtor's right to receive, or property that is traceable to:

. . .

(C) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

APPENDIX H

Or. Rev. Stat. 743.050

Exemption of proceeds, health insurance.

Except as may otherwise be expressly provided by the policy, the proceeds or avails of all health insurance policies and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance policies, issued before, on or after June 8, 1967, shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for the use of the beneficiary.

No. 93-799

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

MOTION FILED
DEC 21 1993

STANDARD INSURANCE COMPANY,
Petitioner,
v.
JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE HEALTH INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONER

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December 21, 1993

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

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STANDARD INSURANCE COMPANY,
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v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 37.2 of the Rules of this Court, the Health Insurance Association of America ("HIAA") hereby moves for leave to file the attached brief *amicus curiae* in support of the petition filed by Standard Insurance Company. Petitioner has consented to the filing of this brief. Although respondent has not opposed the filing of this brief, HIAA has been unable to contact him directly to obtain his formal consent.

There are two good reasons why this Court should accept HIAA's brief in addition to the petition. As an organization that represents the interests of more than

250 insurance companies in the United States,[1] HIAA offers this Court a uniquely broad view of the practical impact of the Oregon Court of Appeals' decision and the conflict in authority concerning whether ERISA[2] pre-empts provisions like the Oregon garnishment exemption at issue in this case. In particular, HIAA's brief focuses on the insurance industry's ongoing struggle to contain costs in the face of enormous losses caused by fraud. HIAA emphasizes the risk that such efforts will be thwarted by decisions like the Oregon Court of Appeals' ruling in this case, which deprives benefit plans of what is often the only effective means of enforcing judgments against defrauders like respondent.

Additionally, HIAA's brief discusses an Eleventh Circuit decision[3] issued since the petition was filed that conflicts with the Oregon Court of Appeals' decision in this case and further demonstrates the need for this Court to clarify the bounds of ERISA pre-emption.

For these reasons, HIAA requests leave to file the attached brief *amicus curiae*.

---

[1] HIAA is a non-profit trade association whose members provide approximately 70 percent of the fully-insured commercial health insurance in the United States. Most of the policies issued by HIAA's members are provided to or through employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA").

[2] Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*

[3] *Schlein* v. *Mills*, 1993 WL 468513 (CA11 Dec. 2, 1993).

Respectfully submitted,

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December 21, 1993

TABLE OF CONTENTS

	Page
INTEREST OF THE AMICUS	1
REASONS FOR GRANTING THE PETITION	3
I. MACKEY DOES NOT REQUIRE A STATE STATUTE TO MENTION ERISA BY NAME IN ORDER TO BE PRE-EMPTED	4
II. MACKEY DOES NOT EXEMPT EVERY STATE-LAW PROVISION RELATING TO GARNISHMENT FROM ERISA PRE-EMPTION	7
III. CLARIFYING MACKEY WILL FURTHER THE POLICIES UNDERLYING ERISA PRE-EMPTION AND WILL ENABLE BENEFIT PLANS TO REDUCE THE IMPACT OF FRAUD	9
CONCLUSION	11

TABLE OF AUTHORITIES

Cases Page

CSCAC v. *El Capitan Development Co.*, 53 Cal.3d 1041, 282 Cal. Rptr. 277, *cert. denied*, 112 S. Ct. 430 (1991) 2
FMC Corp. v. *Holliday*, 498 U.S. 52 (1990) 5, 10
Fort Halifax Packing Co. v. *Coyne*, 482 U.S. 1 (1987) 9
Guidry v. *Sheet Metal Workers International Association*, 1993 WL 444979 (Nov. 4, 1993) 2, 3, 6
Ingersoll-Rand Co. v. *McClendon*, 498 U.S. 133 (1990) 6, 9
Iron Workers Pension Fund v. *Terotechnology*, 891 F.2d 548 (CA5), *cert. denied*, 497 U.S. 1024 (1990) 2
Mackey v. *Lanier Collection Agency*, 486 U.S. 825 (1988) ..... *passim*
Schlein v. *Mills*, 1993 WL 468513 (CA11 Dec. 2, 1993) 2, 3, 6

Statutes and Codes

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ..... *passim*
Conn. Gen. Stat. § 52-352b(e) (1993) 3
Ga. Code Ann. § 18-4-22.1 (1982) 5
Idaho Code § 41-1834 (1993) 3
Iowa Code § 627.6(8)(c) (1993) 3
La. Rev. Stat. Ann. § 22:646 (1993) 3
Me. Rev. Stat. Ann. tit. 14 § 4422(13)(c) (1993) 3
Mich. Comp. Laws § 600.6023(f) (1993) 3
Minn. Stat. § 550.39 (1993) 3
Miss. Code Ann. § 85-3-1(b)(ii) (1991) 3
N.J. Rev. Stat. § 17B:24-8 (1993) 3
Pa. Cons. Stat. Ann. tit. 42 § 8124(c)(7) (1993) 3
S.C. Code Ann. § 15-41-30(10)(c) (1991) 3
Tenn. Code Ann. § 26-2-110(a) (1993) 3

Other Authorities

Health Insurance Association of America, *Preventing and Controlling Health Insurance Fraud* (Jan. 1991) 2

TABLE OF AUTHORITIES—Continued

Page

General Accounting Office, GAO/HRD 92-69, *Report to Chairman, Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives* (May 1992) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-799

STANDARD INSURANCE COMPANY,
Petitioner,

v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

---

BRIEF AMICUS CURIAE OF THE HEALTH INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS

The Health Insurance Association of America ("HIAA") is a non-profit national trade organization formed to advance the interests of the more than 250 insurance companies it represents. These companies provide approximately 70 percent of the fully-insured commercial health insurance in the United States, providing health care coverage to over 65 million Americans. Most of the policies issued by HIAA's members are provided to or through employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA").

HIAA's interest in the decision below is direct and substantial. Health care fraud like that perpetrated by

the respondent in this case is unfortunately common and costly.[1] If benefit plan sponsors are unable to enforce judgments against those who defraud them, the enormous burden of health care fraud [2] will be borne by plan beneficiaries in the form of increased premium costs or reduced benefits.

HIAA is also affected by the lack of uniformity in the law governing whether a defrauded benefit plan can obtain restitution from the defrauder, which is highlighted by this case. Because the Oregon Court of Appeals' decision in this case conflicts with the Tenth Circuit's recent ruling in *Guidry* v. *Sheet Metal Workers International Association*, 1993 WL 444979 (Nov. 4, 1993) and the Eleventh Circuit's decision in *Schlein* v. *Mills*, 1993 WL 468513 (Dec. 2, 1993), the ability of benefit plans to enforce judgments against those who have defrauded them is different in Oregon than it is in Colorado and Florida. Further, the rationale underlying the Oregon court's ruling on the bounds of ERISA pre-emption is in substantial tension with the position on this issue taken by a number of other courts.[3] In light of these differing views, it is at

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[1] Health Insurance Association of America, *Preventing and Controlling Health Insurance Fraud* (Jan. 1991), p. 1 (noting the estimate that health insurance fraud in 1990 constituted a 10 percent surcharge of $55 billion to the annual national cost of health care).

[2] See General Accounting Office, GAO/HRD 92-69, *Report to Chairman, Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives* (May 1992), p. 1 (noting the common estimate that losses resulting from fraud and abuse account for 10 percent of current health care spending and that health care spending is expected to reach $1 trillion by 1995).

[3] See *CSCAC* v. *El Capitan Development Co.*, 53 Cal.3d 1041, 282 Cal. Rptr. 277, *cert. denied*, 112 S. Ct. 430 (1991); *Iron Workers Pension Fund* v. *Terotechnology*, 891 F.2d 548 (CA5), *cert. denied*, 497 U.S. 1024 (1990). The petition discusses these cases at pages 11-13.

best uncertain whether a benefit plan could collect judgments in those States in which exemption provisions like the one at issue in this case have not been reviewed for ERISA pre-emption.[4] This disparity in state laws will generate increased administrative costs, because benefit plans will have to comply with varying provisions governing the collection of fraud judgments.

REASONS FOR GRANTING THE PETITION

The petition presents a classic case for this Court's intervention. The lower courts are confused about two aspects of this Court's ruling concerning the scope of ERISA pre-emption in *Mackey* v. *Lanier Collection Agency*, 486 U.S. 825 (1988); both are presented in the petition. Relying on language from *Mackey*, the Oregon Court of Appeals ruled in this case that ERISA does not pre-empt a state-law provision exempting ERISA plan benefits from garnishment because (1) the exemption is not limited to ERISA benefits; and (2) this Court has tacitly held that generally applicable exemptions from garnishment are not pre-empted by ERISA. This reading of *Mackey* conflicts squarely with the recent Tenth Circuit decision in *Guidry* and Eleventh Circuit ruling in *Schlein*, is inconsistent with this Court's ERISA precedent, and is contrary to the policy and purpose underlying ERISA's pre-emption provision.

In addition to satisfying these traditional criteria for certworthiness, this case offers the Court a particularly

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[4] Provisions exempting plan benefits from garnishment exist in a variety of forms in most states. A sampling of these statutes reveals both the "patchwork" of state laws relating to garnishment exemptions and the need for uniformity. See, *e.g.*, Conn. Gen. Stat. § 52-352b(e) (1993); Idaho Code § 41-1834 (1993); Iowa Code § 627.6(8)(c) (1993); La. Rev. Stat. Ann. § 22:646 (1993); Me. Rev. Stat. Ann. tit. 14 4422(13)(c) (1993); Mich. Comp. Laws § 600.6023(f) (1993); Minn. Stat. § 550.39 (1993); Miss. Code Ann. § 85-3-1(b)(ii) (1991); N.J. Rev. Stat. § 17B-24-8 (1993); Pa. Cons. Stat. Ann. tit. 42 § 8124(c)(7) (1993); S.C. Code Ann. § 15-41-30(10)(c) (1991); Tenn. Code Ann. § 26-2-110(a) (1993).

good vehicle for resolving the evident confusion concerning what this Court held in *Mackey* concerning the bounds of ERISA pre-emption. The issues presented are well-defined and free of procedural problems, and the facts and governing law are undisputed. There is no ostensible benefit to be gained by allowing these issues to "percolate" any longer in the lower courts: the split in authority on the meaning of *Mackey* is established and unlikely to resolve itself. By taking this case and clarifying two points in *Mackey*, this Court would eliminate this confusion speedily.

Beyond resolving the conflicting decisions regarding the meaning of *Mackey* and the scope of ERISA pre-emption, granting the petition and reversing the decision of the Oregon Court of Appeals would further the public interest in two related ways. First, a ruling that ERISA pre-empts antigarnishment provisions like that at issue in this case would mean that a defrauded benefit plan could use existing state-law garnishment procedures to satisfy judgments against the defrauder and thereby offset the burden caused by health care fraud. Second, a ruling ensuring the uniform availability of such procedures would avoid a "patchwork" of conflicting state laws and the accompanying administrative burdens on benefit plans and benefit providers like HIAA's members.

I. MACKEY DOES NOT REQUIRE A STATE STATUTE TO MENTION ERISA BY NAME IN ORDER TO BE PRE-EMPTED.

Mackey v. *Lanier Collection Agency*, *supra*, addressed whether a creditor could enforce a series of judgments by garnishing certain benefits from the debtors' vacation and holiday benefits plan, which was an "employee welfare benefit plan" under ERISA § 1002(1). Georgia law established generally applicable garnishment procedures but exempted from garnishment "[f]unds or benefits of [an] . . . employee benefit plan or program subject to . . .

[ERISA]." Ga. Code Ann. § 18-4-22.1 (1982). This Court ruled that the antigarnishment provision was pre-empted under ERISA § 514(a) because it "relate[d] to" an employee benefits plan. 486 U.S., at 829-30. In discussing why the antigarnishment exception was pre-empted while the general garnishment scheme was not, the Court provided the following explanatory footnote—which apparently has given rise to confusion regarding the scope of ERISA pre-emption:

> "It is not incongruous to find that Ga. Code Ann. § 18-4-20 (Supp. 1987), which provides for garnishment of ERISA welfare benefit plans, escapes pre-emption under ERISA, while striking down § 18-4-22.1—an exception to the general state-law provision—as pre-empted. While we believe that state-law garnishment procedures are not pre-empted by § 514(a), we also conclude that *any* state law which singles out ERISA plans, by express reference, for special treatment is pre-empted. . . . It is this 'singling out' that pre-empts the Georgia antigarnishment exception." *Mackey*, 486 U.S., at 838, n.12 (emphasis in original).

In an apparent misunderstanding of the Court's reasoning in *Mackey*, the Oregon Court of Appeals held that the antigarnishment exemption at issue in this case did not "relate to" an ERISA plan—and therefore was not pre-empted by ERISA--because it was not limited to ERISA-covered plans, even though there was no dispute that the exemption applied to benefits derived from plans covered by ERISA. Pet. App. 3. This analysis is contrary to this Court's ERISA pre-emption precedent, which holds that a state statute can be pre-empted by ERISA in any of *three* ways. First, a statute is pre-empted if—as was true in *Mackey*—it refers to ERISA plans directly. Second, a statute is pre-empted if it refers to plans that are covered by ERISA without mentioning ERISA directly. See *FMC Corp.* v. *Holliday*, 498 U.S. 52, 58 (1990); *Mackey*, 486 U.S., at 831. Third, a statute is

pre-empted if it has a "connection with" a plan covered by ERISA, *i.e.*, if the ERISA plan is affected by the statute at issue "even if the law is not specifically designed to affect such plans, or the effect is only indirect." See *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 139 (1990).

The Oregon Court of Appeals apparently understood *Mackey* as limiting the pre-emptive scope of ERISA to statutes that "single out" ERISA by name. Pet. App. 3. As such, the Court of Appeals conducted only one-third of the pre-emption analysis required by this Court's precedent and missed the point of *Mackey*. Other courts have adopted a similarly erroneous view of the Court's holding in *Mackey*.[5]

A different view of *Mackey*—one consistent with this Court's precedent—is that the Court included the footnoted language quoted above to explain why the particular antigarnishment exemption in *Mackey* was pre-empted, and not to repudiate the alternative bases for pre-emption under the Court's ERISA cases. In accord with this interpretation of *Mackey*, the Tenth Circuit in *Guidry* found that a Colorado antigarnishment exception was pre-empted by ERISA § 514(a) although the exemption refers only to the " 'avails of any pension or retirement benefits, or deferred compensation plan,' " and—like the Oregon exemption at issue in this case—does not mention ERISA specifically. Similarly, the Eleventh Circuit recently ruled in *Schlein* that ERISA pre-empted a Florida garnishment exemption[6] although the "statutory language of [the ex-

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[5] The petition discusses these cases and their various constructions of *Mackey* at pages 20-21.

[6] The Eleventh Circuit ruled that the Florida exemption, though pre-empted by ERISA § 514(a), fell within the § 514(d) exception to pre-emption. 1993 WL 468513, at *10. The *Schlein* court's discussion of § 514(a) is what is relevant for purposes of analyzing the split in authority that HIAA and petitioner have asked this Court to resolve.

emption provision] does not expressly mention ERISA." 1993 WL 468513, at *5. The *Schlein* court found that the exemption "related to" ERISA because benefit plans covered by ERISA fell within the exemption's scope. *Ibid.*

This Court should grant the petition to resolve this split in authority and clarify that nothing in *Mackey* was intended to abrogate this Court's holdings that § 514(a) of ERISA pre-empts any state law that refers to ERISA plans directly or indirectly, or substantively affects such plans.

II. MACKEY DOES NOT EXEMPT EVERY STATE-LAW PROVISION RELATING TO GARNISHMENT FROM ERISA PRE-EMPTION.

This Court recognized in *Mackey* that general state-law garnishment mechanisms are not pre-empted by ERISA because they are necessary to give effect to the "sue and be sued" provision of ERISA (§ 502(d)), because Congress "remain[ed] silent" though it was aware welfare benefits could be garnisheed, and because such mechanisms are merely "procedural" [7] in nature. 486 U.S., at 833-38.

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[7] The Court carefully limited the scope of its ruling that Georgia's general garnishment procedures were not pre-empted:

> "We note . . . that under Georgia law (at least), garnishment is a 'procedural' mechanism for the enforcement of judgments. Georgia's statute that provides for garnishment creates no substantive causes of action, no new bases for relief, or any grounds for recovery; the Georgia garnishment law does not create the rule of decision in any case affixing liability. Rather under Georgia law, postjudgment garnishment is nothing more than a method to collect judgments *otherwise* obtained by prevailing on a claim against the garnishee. See Ga. Code Ann. § 18-4-60 (1982)." *Mackey*, 486 U.S., at 835, n.10 (emphasis in original).

In rejecting petitioner's pre-emption argument in this case, the Oregon Court of Appeals collapsed—and thereby distorted—this Court's analysis in *Mackey*:

> "We understand *Mackey* to mean that the congressional silence concerning garnishment of ERISA welfare plans acknowledged and accepted various state practices concerning garnishment, *including the practice of refusing garnishment*." Pet. App. 3 (emphasis added).

By focusing only on the "congressional silence" aspect of this Court's reasoning in *Mackey*, the Oregon Court of Appeals reached the anomalous conclusion that the Oregon antigarnishment provision survived ERISA pre-emption even though—in direct contrast to the general garnishment procedures upheld in *Mackey*—this provision frustrated ERISA's "sue and be sued" provision and had a *substantive* impact on a plan's ability to enforce a judgment. In this case, respondent was able to use the Oregon antigarnishment provision at issue to prevent an ERISA plan fiduciary from recouping losses the plan suffered because of respondent's fraud. Thus, although petitioner was able to sue respondent under ERISA's civil enforcement provision and obtain a judgment against him, the judgment was robbed of effectiveness by the Oregon antigarnishment provision. Respondent was able to resist the force of the judgment against him because of the substantive "right" to relief created by the Oregon antigarnishment provision. This is the type of conflict with state law that ERISA's broad pre-emption provision was intended to eliminate.

This Court's ruling in *Mackey* that Georgia's general garnishment procedures were not pre-empted by ERISA was careful and deliberately narrow. The Court noted that whether these provisions were pre-empted was a "complex" and "close" question, 486 U.S., at 830-31, and took care to explain that the provisions withstood pre-emption only because they satisfied each of the three

criteria set forth above. Although some courts have been sensitive to the distinctions this Court drew in *Mackey*,[8] others—like the Oregon Court of Appeals in this case—have not. By reading *Mackey* as permitting all provisions of the Oregon garnishment statute to be classified as "procedural"—and thus not pre-empted—the Oregon Court of Appeals restricted the scope of ERISA pre-emption in a way that is inconsistent with this Court's settled precedent and the purpose of ERISA's pre-emption provision. This Court should grant the petition to clarify the distinction drawn in *Mackey* between purely procedural state-law mechanisms that are not pre-empted by ERISA and state laws that have a substantive impact on ERISA benefit plans and therefore fall within ERISA's pre-emptive scope.

III. CLARIFYING MACKEY WILL FURTHER THE POLICIES UNDERLYING ERISA PRE-EMPTION AND WILL ENABLE BENEFIT PLANS TO REDUCE THE IMPACT OF FRAUD.

This Court has emphasized that Congress's overriding purpose in enacting ERISA's broad pre-emption provision was to eliminate conflicting or inconsistent state and local regulation of ERISA-covered plans to increase efficiency and reduce the cost of providing benefits,[9] and has recognized that subjecting benefit providers to disparate legal regimes increases the risk that employers will opt not to offer certain benefits to their employees. *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 10 (1987).

This link between cost containment and the increased availability of benefits to employees is a fundamental

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[8] See cases cited and discussed in the petition at 11-12.

[9] *Ingersoll-Rand Co.*, 498 U.S., at 142 ("Section 514(a) was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government.").

premise on which Congress structured ERISA's broad pre-emption clause. It makes sense. Reducing the cost of providing benefits makes it more likely that a wider range of benefits will be provided to employees, thereby achieving Congress's ultimate goal in enacting ERISA. By taking this case, clarifying *Mackey*, and reversing the decision of the Oregon Court of Appeals, this Court will further the cost-containment goal in two related respects.

First, a reversal of the Oregon Court of Appeals' decision and repudiation of its narrow construction of the "relates to" language in ERISA § 514(a) will enable benefit providers to contain costs directly by using state-law garnishment procedures to enforce judgments against those who have defrauded them. A growing number of insurers are developing anti-fraud programs in an effort to redress the tremendous losses attributable to health care fraud.[10] Provisions like the Oregon garnishment exemption at issue in this case can deprive a defrauded plan of access to what is often the only source of funds available to recoup the losses caused by the defrauder.

Second, by holding that ERISA pre-empts state laws like the Oregon garnishment exemption, the Court will eliminate the disparities in state law governing the ability of defrauded benefit plans to use existing state-law garnishment procedures. Like the antisubrogation provision of Pennsylvania law that this Court found pre-empted by ERISA in *FMC Corp.* v. *Holliday*, *supra*, varying court rulings on the status of antigarnishment provisions will compel benefit providers to

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[10] In a 1993 survey of 86 insurance companies (representing 65 percent of the commercial insurance market and 14 percent of the Blue Cross/Blue Shield market), HIAA found that 79 percent of the insurers who responded to the survey had developed health care anti-fraud programs. The number of cases investigated by these companies has increased by more than 75 percent since 1990. 1993 HIAA Anti-Fraud Survey.

> "design their programs in an environment of differing State regulations[, which] would complicate the administration of nationwide plans, producing inefficiencies that employers might offset with decreased benefits." 498 U.S., at 60.

This is the risk Congress intended to avoid in enacting ERISA. By granting the petition and reversing the Oregon Court of Appeals' decision, this Court will ensure the uniformity of law essential to effective cost containment and the correlative increase in the availability of benefits to plan beneficiaries.

CONCLUSION

For the foregoing reasons, HIAA respectfully urges this Court to grant the petition and set this case for oral argument.

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December 21, 1993

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No. 93-799

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,
Petitioner,

v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

MOTION FOR LEAVE TO FILE JOINT *AMICI CURIAE* BRIEF

JOINT *AMICI CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI FILED BY STANDARD INSURANCE COMPANY

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MOTION FOR LEAVE TO FILE JOINT *AMICI CURIAE* BRIEF

American Council of Life Insurance ("ACLI") and Defense Research Institute ("DRI") (hereinafter "Movants") hereby jointly move this Court, pursuant to Rule 37.2 of the Rules of this Court, for leave to file a joint *amici curiae* brief in support of the Petition for Writ of Certiorari filed in this matter on November 19, 1993 by Standard Insurance Company ("Petitioner"). If such leave is granted, a Joint *Amici Curiae* Brief is attached hereto and submitted with this Motion. Pursuant to Rule 37.2, this Motion is timely filed in that the Petition for Writ of Certiorari filed in this matter was received by the attorneys for Respondent on November 23, 1993, and this Motion and the attached Joint *Amici Curiae* Brief are being filed within 30 days of that date.

Although Petitioner has consented to the filing of the attached Joint *Amici Curiae* Brief, Movants are unable to state whether Respondent consents to the filing of that Brief in that Movants' attorneys have not attempted to contact Respondent because they have been informed that Respondent may be appearing *pro se* in this Court. However, as of the date of the filing of this Motion, Movants were unable to determine whether Respondent definitely would be appearing *pro se* and therefore their attorneys did not attempt to contact Respondent to see if he would consent to the filing of the Joint *Amici Curiae* Brief.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

The issue presented by the Petition for Writ of Certiorari filed in this matter is whether the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. §§ 1001-1461) preempts a state anti-garnishment law [Or. Rev. Stat. § 23.160(1)(j)(C)] insofar as that law conflicts with ERISA's civil enforcement provision. That issue is of great interest to Movants for the following reasons:

1. ACLI is the nation's largest life insurance trade association and has 634 members. ACLI members have 89.9 percent of the life insurance in force in the United States in legal reserve life insurance companies. ACLI members write 92.9 percent of the group life insurance written in Oregon and 91.5 percent of the total group life insurance written in the United States. ACLI members include 422 companies that are licensed to conduct business in Oregon. The issue presented by the Petition for Writ of Certiorari is of great interest to ACLI because of the volume of disability insurance written in Oregon and other states with similar anti-garnishment laws by numerous member companies of ACLI. The ACLI members who administer and underwrite employee welfare

benefit plans will be significantly and adversely impacted by the decision of the Oregon Court if it is not reversed by this Court. The decision will require alteration of the benefit and premium packages the ACLI members are able to offer to employers who establish ERISA plans.

2. DRI is a national, non-profit research and defense trial and insurance attorneys' association whose purposes include increasing the professional skill and knowledge of attorneys, enhancing the services of the legal profession to the public, promoting improvements in the adversary system of jurisprudence, and working for the prompt and fair administration of justice. DRI consists of over 18,000 trial attorneys and more than 400 corporate members nationwide. Of its corporate members, many are insurers of ERISA plans and others maintain insured and uninsured ERISA plans. DRI, like ACLI, is concerned that the Oregon Court's ruling in this matter threatens the insurance industry's efforts to thwart insurance fraud. The battle against insurance fraud is an issue of great concern to DRI and ACLI.

Particularly for the reasons set forth at pages 1-4 of the attached Joint *Amici Curiae* Brief, this case presents an issue of vital importance to Movants and to Movants' members nationwide. Movants believe that the arguments addressed in the attached Joint *Amici Curiae* Brief will assist this Court in determining whether certiorari should be granted. That is particularly true because the resolution of the preemption issue presented by the Petition for Writ of Certiorari will have profound financial and administrative impact on all federally governed ERISA plans in Oregon and in other states with similar anti-garnishment laws if other state courts rule as did the Oregon Court on the preemption issue.

For these reasons, Movants request that this Court grant leave and allow the filing of the attached Joint *Amici Curiae* Brief.

DATED: December 23, 1993.

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TABLE OF CONTENTS

PAGE

INTEREST OF *AMICI CURIAE*

Whether ERISA preempts Oregon's anti-garnishment law is an important issue that should be addressed by this Court because it will affect all federally governed ERISA plans in Oregon and in other states with similar laws. 1

ARGUMENT

The decision of the Oregon Court is contrary to decisions of this Court recognizing the extremely broad preemptive reach of ERISA over state laws (like Oregon's anti-garnishment law) insofar as they relate to and conflict with ERISA's civil enforcement remedies. 4

1. Because Oregon's anti-garnishment law "relates to" an ERISA employee benefit plan, it is preempted by ERISA. 5

2. In ruling that Oregon's anti-garnishment law is not preempted because it does not expressly refer to ERISA, the Oregon Court misinterpreted and misapplied this Court's controlling decision in *Mackey*. .. 9

3. The Oregon Court also misconstrued this Court's decision in *Mackey* in ruling that Congressional silence regarding garnishment of ERISA welfare plan benefits somehow constituted acceptance of laws like Oregon's anti-garnishment law. 12

4. The Oregon Court erred in ruling that ERISA mandates uniform treatment of ERISA plans but not ERISA benefits, and also in ruling that Congress did not intend for there to be uniformity of garnishment procedures from state to state. .. 15

CONCLUSION 18

TABLE OF AUTHORITIES

Cases	PAGE
Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981)	5, 6, 7, 14
Dist. of Col. v. Washington Trade Bd., ___ U.S. ___, 113 S. Ct. 580, 121 L. Ed. 2d 513 (1992)	6
E-Systems, Inc. v. Pogue, 929 F.2d 1100 (5th Cir.), *cert. denied*, 112 S. Ct. 585 (1991)	7, 10
FMC Corp. v. Holliday, 498 U.S. 52 (1990)	5, 6, 7, 9, 10
Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1987)	15-17
Greany v. Western Farm Bureau Life Ins. Co., 973 F.2d 812 (9th Cir. 1992)	17
Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9, ___ F.3d ___, 1993 U.S. App. LEXIS 28698 (10th Cir. 1993)	11, 17
Ingersoll-Rand v. McClendon, 498 U.S. 133 (1990)	6, 8
John Hancock Life Ins. Co. v. Harris Bank, No. 92-1074, 1993 U.S. LEXIS 7940 (Dec. 13, 1993)	5
Ky. Laborers Dist. Council Health & Wel. v. Hope, 861 F.2d 1003 (6th Cir. 1988)	8
Mackey v. Lanier Collections Agency, 486 U.S. 825 (1988)	9, 10, 12, 13-14, 15
Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987)	5, 6, 8, 9
Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983)	5, 6
Standard Ins. Co. v. Saklad, 849 P.2d 1150, *rev. denied*, 858 P.2d 876 (Or. 1993)	*passim*

Statutory Provisions

29 U.S.C. § 1056(d)(1) 14

29 U.S.C. § 1132(a) 1

29 U.S.C. § 1144(a) 4, 13

Employee Retirement Income Security Act of 1974 (29 U.S.C. §§ 1001-1461) ..... *passim*

Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 206(d)(1), 88 Stat. 829 (1974) 14

Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 514(a), 88 Stat. 829 (1974) .. 13, 14

Or. Rev. Stat. § 23.160(1)(j)(C) (Oregon's anti-garnishment law) ..... *passim*

Other Authorities

American Council of Life Insurance 1992 Life Insurance Fact Book 3

H.R. Rep. No. 93-533, 93d Cong., 2d Sess. 12 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4650 8

United States General Accounting Office, *Report to the Chairman, Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives*, May 1992 3

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JOINT *AMICI CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI FILED BY STANDARD INSURANCE COMPANY

INTEREST OF *AMICI CURIAE*

Whether ERISA preempts Oregon's anti-garnishment law is an important issue that should be addressed by this Court because it will affect all federally governed ERISA plans in Oregon and in other states with similar laws.

The important issue presented in this matter is whether the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. §§ 1001-1461) preempts a state anti-garnishment law [Or. Rev. Stat. § 23.160(1)(j)(C)] insofar as that law conflicts with ERISA's civil enforcement provisions [29 U.S.C. § 1132(a)]. The Oregon Court erroneously ruled that the extremely broad preemptive reach of ERISA repeatedly recognized by this Court somehow is

not broad enough to include Oregon's anti-garnishment law.

That preemption issue warrants review by this Court because the resolution of that issue will have profound financial and administrative impact on all federally governed ERISA plans in Oregon and in other states with similar anti-garnishment laws if other state courts rule as did the Oregon Court on that issue. The decision of the Oregon Court, if not reversed, will thwart the legal responsibility of a fiduciary [such as Petitioner Standard Insurance Company ("Standard")] of a defrauded ERISA plan to recoup losses due to fraud on the plan committed by a plan beneficiary such as Respondent Saklad. That will significantly impact the plan assets of employee welfare benefit plans established by employers and the benefits and premiums for employees covered under such plans.

Because of the volume of disability insurance written in Oregon and other states with similar anti-garnishment laws by numerous member companies of *Amicus Curiae* American Council of Life Insurance ("ACLI"), the issue of whether ERISA's comprehensive federal civil enforcement statutory scheme prevails over Oregon's anti-garnishment law is of great interest to ACLI. The ACLI members who administer and underwrite employee welfare benefit plans will be significantly and adversely impacted by the decision of the Oregon Court if it is not reversed by this Court. That decision will require alteration of the benefit and premium packages the ACLI members are able to offer to employers who establish ERISA plans.

Like ACLI, *Amicus Curiae* Defense Research Institute ("DRI") is concerned that the Oregon Court's ruling threatens the insurance industry's efforts to thwart insurance fraud. DRI has joined the battle against insurance fraud, which is an issue of great concern to DRI and ACLI.

The United States General Accounting Office recently estimated that the cost attributable to health care fraud constituted a 10 percent surcharge of $70 billion to the nation's $700 billion annual health care bill in the 1991-92 fiscal year. If health care fraud such as that committed by Saklad remains unchecked, the estimated cost could reach $100 billion annually by 1995.[1] For example, in Oregon alone the impact of health insurance fraud is a significant factor. In the 1991 calendar year, Oregonians paid over $388 million in health care premiums.[2] While these are only estimates of the amount of health insurance fraud, the cost of fraud undoubtedly is absorbed by both the premium-paying public and insurers.

The decision of the Oregon Court, if not reversed, will adversely impact the cost of employee benefit plans issued in Oregon and will prevent ERISA plan fiduciaries from exercising their right and duty under federal law to remedy fraudulent misappropriation of ERISA plan assets. It will send a message to those, like Saklad, who defraud ERISA plans that in Oregon or other states with similar anti-garnishment laws they have a safe harbor from paying restitution for their fraud.

The dangerous precedent created by the decision of the Oregon Court is not limited to the garnishment issue involved in this matter. The decision of the Oregon Court,

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[1] United States General Accounting Office, *Report to the Chairman, Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives*, May 1992, p. 1.

[2] American Council of Life Insurance 1992 Life Insurance Fact Book (p. 74), published by ACLI. If the national 10 percent health care fraud surcharge figure is applied to these costs in Oregon alone, approximately $38 million of health insurance premiums is attributable to fraud. The vast majority of these expenses are funded through ERISA plans.

if not reversed, also will create a risk of undermining the uniform federal regulation of ERISA plans that ERISA mandates and that this Court repeatedly has recognized.

ARGUMENT

The decision of the Oregon Court is contrary to decisions of this Court recognizing the extremely broad preemptive reach of ERISA over state laws (like Oregon's anti-garnishment law) insofar as they relate to and conflict with ERISA's civil enforcement remedies.

ERISA established a comprehensive federal statutory scheme designed to provide for the uniform administration of private retirement plans and employee benefit plans. The Oregon Court correctly acknowledged that ERISA includes an extremely broad preemption provision that preempts all state laws that "relate to" any employee benefit plan. 29 U.S.C. § 1144(a).[3]

However, despite the expansive interpretation of the preemption provision repeatedly given it by this Court, the Oregon Court reversed the Orders of the trial court that would have enabled Standard (as the fiduciary of an ERISA plan defrauded by Saklad) to garnish the benefits that Saklad is receiving from another ERISA plan in order to obtain restitution of the benefits fraudulently obtained by Saklad. The Oregon Court either misunderstood or misapplied leading precedent of this Court that supports the Orders of the trial court allowing the garnishment. Standard, as the fiduciary of a defrauded ERISA plan, should be allowed to garnish the benefits of Saklad's

[3] 29 U.S.C. § 1144(a) provides in pertinent part: "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan." (Emphasis added)

second ERISA plan notwithstanding Oregon's anti-garnishment law because that law is preempted by ERISA insofar as it would prevent that garnishment.

1.

Because Oregon's anti-garnishment law "relates to" an ERISA employee benefit plan, it is preempted by ERISA.

The Oregon Court acknowledged that the preemptive reach of ERISA repeatedly has been described by this Court to be "broad." However, the Oregon Court erred in ruling that Oregon's anti-garnishment law does not fall within that broad preemptive reach because the state law does not "relate to" ERISA. *Standard Ins. Co. v. Saklad*, 849 P.2d 1150, 1152, *rev. denied*, 858 P.2d 876 (Or. 1993).

This Court consistently has emphasized the broad nature of ERISA's preemption provision in striking down state laws having even an *indirect* connection with or impact on ERISA plans. The ERISA preemption provision has been described by this Court as "conspicuous for its breadth" [*FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990)], and its language as "deliberately expansive" [*Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987); *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981)]. In its very recent decision in *John Hancock Life Ins. Co. v. Harris Bank*, No. 92-1074, 1993 U.S. LEXIS 7940, at *9 (Dec. 13, 1993), this Court stated that ERISA "calls for federal supremacy when [ERISA and a state law] cannot be harmonized or accommodated."

This Court has broadly construed the "relates to" language in ERISA's preemption provision to encompass any state statute having *either* a "connection with or reference to" employee benefit plans. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983). The Oregon Court, however, incorrectly considered only *one* of those tests in ruling that

ERISA's preemption is not "boundless" and does not apply to Oregon's anti-garnishment law.

The issue in this matter is whether Oregon's anti-garnishment law "relates to" employee benefit plans and is therefore preempted. That answer should be "yes" given this Court's broad interpretation of the "relates to" language and its consistent rulings that even those state laws that only *collaterally* or *indirectly* affect employee benefit plans are preempted by ERISA. *Alessi*, 451 U.S. at 525 ("It is of no moment that New Jersey intrudes indirectly, through a workers' compensation law rather than directly, through a statute called 'pension regulation' "); *Shaw*, 463 U.S. at 100 (New York's human rights and disability benefits law preempted because it dealt with subject matter covered by ERISA and affected employee benefit plans); *Pilot Life Ins. Co.*, 481 U.S. at 47 (law need not be specifically designed to affect employee benefit plans in order to "relate to" the plans; "indirect" effect is sufficient).

This Court repeatedly has rejected efforts to limit preemption to state laws only relating to specific subjects mentioned in ERISA. *See, e.g., Dist. of Col. v. Washington Trade Bd.*, ____ U.S. ____, 113 S. Ct. 580, 121 L. Ed. 2d 513, 520 (1992); *Ingersoll-Rand v. McClendon*, 498 U.S. 133, 138-39 (1990) (Congress did not mean to preempt only state laws specifically designed to affect employee benefit plans); *FMC Corp. v. Holliday*, 498 U.S. at 58 (Pennsylvania anti-subrogation statute preempted by ERISA even though statute did not expressly mention ERISA).[4]

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[4] The effect of Oregon's anti-garnishment law on ERISA plans is comparable to the Pennsylvania anti-subrogation law at issue in *FMC Corp. v. Holliday* that prohibited disability benefit plans from being structured in a manner requiring reimbursement in the event that the injured worker obtained a recovery of medical expenses from a third-party tortfeasor. This Court ruled that the

(Footnote continued on following page)

Furthermore, it is well established under ERISA that state statutes having a significant *economic impact* on employee welfare benefit plans unequivocally "relate to" those plans and are therefore preempted. *E-Systems, Inc. v. Pogue*, 929 F.2d 1100 (5th Cir.), *cert. denied*, 112 S. Ct. 585 (1991). In *E-Systems*, the court struck down a Texas tax statute applied to administrators of self-funded ERISA plans, holding that the tax clearly related to the plans because it would have a significant economic impact on them. 929 F.2d at 1103. The court in *E-Systems* relied heavily upon this Court's mandate in *FMC Corp. v. Holliday, supra*, and *Alessi v. Raybestos-Manhattan, supra*, to expansively apply the "relates to" language of ERISA's preemption provision even to those state laws that only *indirectly* affect employee benefit plans.[5] *Id.*

Clearly, Oregon's anti-garnishment law "relates to" and has a profound economic impact on ERISA plans. Like the tax in *E-Systems, Inc. v. Pogue, supra*, Oregon's anti-garnishment law results in a loss to the ERISA plans, thereby increasing premiums and reducing benefits available to plan participants (employees and their dependents).

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[4] *continued*

Pennsylvania law, which precluded ERISA plan providers from seeking reimbursement of benefits through subrogation, interfered with the rights and remedies afforded under ERISA's civil enforcement provision. This Court further ruled that differing state laws affecting the right to seek reimbursement by subrogation would undermine the congressional intent to provide for uniform treatment of welfare benefit plans governed by ERISA. 498 U.S. at 60.

[5] The state statute at issue in *E-Systems*, like Oregon's anti-garnishment law, made no *direct* reference to ERISA. The court in *E-Systems* concluded that the statute *indirectly* regulated and affected ERISA plans and therefore was connected to those plans, resulting in preemption under ERISA's preemption provision. That is significant for the reasons discussed at pages 9-12 below.

Oregon's anti-garnishment law unquestionably "relates to" the two employee benefit plans issued by Standard to Saklad (the plan defrauded by Saklad and also the plan being garnished). The plan assets of the defrauded plan will suffer a severe economic impact in the amount of $367,000 (the amount of benefits fraudulently obtained by Saklad) if Standard is prohibited from garnishing the benefits of the second ERISA plan being paid to Saklad.[6] That will have a profound financial impact on the plan assets of the defrauded plan that are available to pay valid claims of other beneficiaries of that plan. It also will cause an increase in premiums charged under that defrauded plan due to the inability to recoup the plan assets fraudulently obtained by Saklad. Moreover, the anti-garnishment law directly refers to the type of benefits due Saklad under the plan that Standard is attempting to garnish. Finally, ERISA plans that are unable to garnish to recover fraudulently paid claims will have increased administrative costs due to variances in state anti-garnishment laws, and that is clearly against Congress's goal of a uniform civil enforcement scheme under ERISA. *Pilot Life Ins. Co.*, 481 U.S. at 52.[7]

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[6] It is well established that ERISA plan fiduciaries have the right, indeed the fiduciary duty, to recover plan benefits fraudulently obtained by plan participants. *See Ky. Laborers Dist. Council Health & Wel. v. Hope*, 861 F.2d 1003, 1005 (6th Cir. 1988).

[7] This Court has recognized that, consistent with the legislative history of ERISA, ERISA's preemption provision was included "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government[; and that] [o]therwise, the inefficiencies created could work to the detriment of plan beneficiaries." *Ingersoll-Rand*, 498 U.S. at 142; *see also* H.R. Rep. No. 93-533, 93d Cong., 2d Sess. 12 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4650 ("The uniformity of decision which the Act is designed to foster will help administra-

(Footnote continued on following page)

The purpose of ERISA's preemption provision is to avoid conflicting or inconsistent state and local regulation of ERISA plans. The decision by the Oregon Court directly conflicts with that purpose. If not reversed, that decision will frustrate the intent of Congress to provide for nationwide uniformity in the regulation of ERISA plans and increase plans' administrative costs, thereby reducing benefits available to plan participants and their beneficiaries.

2.

In ruling that Oregon's anti-garnishment law is not preempted because it does not expressly refer to ERISA, the Oregon Court misinterpreted and misapplied this Court's controlling decision in *Mackey*.

The Oregon Court erred in ruling that a leading decision of this Court in *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), is distinguishable. The incorrect basis of that ruling was that the state law that this Court in *Mackey* held was preempted expressly referred to ERISA, whereas Oregon's anti-garnishment law does not and therefore is not preempted. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152.

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[7] *continued*

tors, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws"). Differing state laws that affect the ability of ERISA plan providers to recoup amounts fraudulently paid out under an ERISA-regulated plan would "frustrate plan administrators' continuing obligation to calculate uniform benefit levels nationwide." *FMC Corp. v. Holliday*, 498 U.S. at 60. This Court has recognized that both the administrative procedures and the benefits of a plan could be affected by restrictions imposed by differing state laws on the ability of a plan provider to obtain reimbursement of amounts paid as benefits.

While ERISA's preemptive reach may not be "boundless," as observed by the Oregon Court (*id.*), it certainly is broad enough to preempt Oregon's anti-garnishment law insofar as that law conflicts with ERISA. In ruling otherwise, the Oregon Court misconstrued the controlling decision of this Court in *Mackey*, which compels ERISA preemption of Oregon's anti-garnishment law under the facts of this matter.[8]

The Oregon Court erroneously concluded that *Mackey* is distinguishable on the grounds that the state law in *Mackey* expressly referred to ERISA plans, while Oregon's anti-garnishment law does not. That is a flawed conclusion because, as discussed above, state laws are preempted if they *either* have a "connection with" *or* "reference to" ERISA. *Mackey*, 486 U.S. at 843.

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[8] In *Mackey*, this Court ruled that a Georgia statutory provision expressly exempting ERISA benefits from garnishment was preempted by ERISA. This Court ruled that another provision creating the general right to garnishment was not preempted, as the ERISA enforcement scheme provides that plans can sue and be sued and also allows them to be garnished. The Georgia anti-garnishment law was similar to that of Oregon's. It attempted to exempt ERISA plan-paid benefits from garnishment. This Court in *Mackey* struck down that provision of the state law because it specifically referred to ERISA, but left intact the general garnishment right. The Court held that such an express reference "suffices to bring it within the federal law's preemptive reach." 486 U.S. at 830.

While this Court in *Mackey* invalidated the Georgia anti-garnishment law because it expressly referred to "ERISA plans" and singled out ERISA plans for different treatment, that ruling does not mandate a different result in this matter. This Court in *Mackey* simply addressed the "reference to" provision of the ERISA preemption rule, as the state law specifically mentioned ERISA. Thus, there was no need for this Court in *Mackey* to address the additional prong of the argument applying to "connection with." Furthermore, the "reference to" test does not require use of the magical words "ERISA" or "employee welfare benefit plan" before preemption can occur. *FMC Corp. v. Holliday, supra*; *E-Systems, Inc. v. Pogue, supra.*

The ruling by the Oregon Court simply elevates form over substance. Because Oregon's anti-garnishment law does not expressly use the words "ERISA" or "employee welfare benefit plan," the Oregon Court erroneously concluded that the law is not preempted by ERISA. What the Court ignored, however, is that Oregon's anti-garnishment law, in referring to "compensation of loss of future earnings," does use terms that clearly describe employee benefit plans or plan assets.[9] The only benefits that "future earnings" can refer to are liability benefits (which are covered by ERISA) and workers' compensation.

In order to be preempted, Oregon's anti-garnishment law need not refer specifically to "ERISA" or "employee benefit plans" because, even without a "reference to" ERISA or employee benefit plans, a state law's "connection with" a plan is sufficient for preemption.[10] As discussed above, it is clear that Oregon's anti-garnishment law has such a connection with and indirect reference to ERISA plans because it results in a negative economic impact on them.

There can be no doubt that Oregon's anti-garnishment law has a "connection with" ERISA plans because it would apply in this matter to prohibit garnishment of payments due from an ERISA plan to Saklad to repay another ERISA plan for benefits fraudulently obtained by Saklad. Nor can there be any doubt that a $367,000 loss

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[9] Or. Rev. Stat. § 23.160(1)(j)(C) (the anti-garnishment law) exempts from garnishment "[a] payment in compensation of loss of future earnings of the debtor . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

[10] *See* Standard's Petition for Writ of Certiorari, pp. 14-22, where Standard discusses this issue and a conflict between the Oregon Court's ruling in this regard and a recent decision of the Tenth Circuit in *Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9*, ____ F.3d ____, 1993 U.S. App. LEXIS 28698 (10th Cir. 1993).

of plan assets resulting from Saklad's fraud clearly has a "connection with" the defrauded ERISA plan. Thus, the absence of a direct ERISA reference is irrelevant. The Oregon anti-garnishment law adversely impacts the financial assets of the plan that Saklad defrauded; it will require an increase in premiums by Standard to that plan and will increase administrative costs to ERISA plans due to a lack of uniformity in the ability to collect restitution for benefits fraudulently obtained.

Therefore, Oregon's anti-garnishment law is preempted by ERISA to the extent it applies to ERISA plans, leaving intact the general garnishment law that would allow Standard to garnish the ERISA plan benefits that Saklad is now receiving. Contrary to the ruling of the Oregon Court, this Court's decision in *Mackey* is not distinguishable from this matter. The *effect* of both the Oregon and Georgia anti-garnishment laws is identical. Both "relate to" an ERISA plan; the Georgia law because it specifically referred to ERISA, and the Oregon law because it refers to benefits payable under an ERISA plan. Furthermore, as applied, Oregon's anti-garnishment law has a "connection with" both of the ERISA plans—that which Saklad defrauded and that which Standard is seeking to garnish. Therefore, the attempt by the Oregon Court to distinguish this Court's decision in *Mackey* simply cannot withstand careful scrutiny.

3.

The Oregon Court also misconstrued this Court's decision in *Mackey* in ruling that Congressional silence regarding garnishment of ERISA welfare plan benefits somehow constituted acceptance of laws like Oregon's anti-garnishment law.

The Oregon Court misunderstood and misconstrued this Court's decision in *Mackey* "to mean that the congres-

sional silence concerning garnishment of ERISA welfare plans acknowledged and accepted various state practices concerning garnishment, *including the practice of refusing garnishment.*" *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152 (emphasis added). As discussed above, that portion of a law like Oregon's that prohibits garnishment of ERISA plans is preempted by ERISA, leaving the remainder of such a law intact. In *Mackey*, this Court expressly upheld the remaining Georgia garnishment law's applicability to ERISA plans after striking down the anti-garnishment section. Thus, there can be no question that if the Oregon anti-garnishment law is preempted, the remainder of the garnishment law is applicable.

This Court in *Mackey* concluded that ERISA does not preempt the general garnishment law because Congress did not intend to preclude state laws regarding attachment of ERISA plan benefits:

> In our view, however, certain ERISA provisions, and several aspects of the statute's structure, indicate that Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit plans, even when those mechanisms prevent plan participants from receiving their benefits.

486 U.S. at 831-32. In footnote 6 (*id.* at 831), this Court cited numerous other decisions of various circuit and district courts in which those courts consistently have ruled that ERISA does not preempt the application of state garnishment procedures to ERISA plans.

This Court in *Mackey* acknowledged that ERISA allows employee welfare benefit plans to "sue and be sued." 486 U.S. at 833. Surely that contemplates obtaining and executing on judgments against such plans. This Court noted that Section 514(a) [29 U.S.C. § 1144(a)] (the preemption provision) makes no distinction between plan funds generally and those plan funds due a particular beneficiary:

> If § 514(a) allows a creditor of a plan to employ state-law procedures to attach plan funds (to collect a judgment it has won against the plan)—if such an action does not "relate to" a benefit plan—we do not see how § 514(a) bars a participant's creditor from employing the same state-law mechanisms.

Id. at 836. This Court also noted that where Congress intended to prohibit alienation, it did so specifically in the statute. [Section 206(d)(1)—29 U.S.C. § 1056(d)(1)—prohibits alienation or assignment of *pension* benefit plans.][11] The absence of a similar provision relating to *welfare* benefit plans (at issue in this matter) is not aimless "congressional silence," as the Oregon Court concluded, but is a deliberate indication that garnishment of ERISA *welfare* benefit plans was contemplated.

While this Court in *Mackey* recognized that "state-law methods for *collecting* money judgments must, as a general matter, remain undisturbed by ERISA" [486 U.S. at 834 (emphasis added)], there is nothing in *Mackey* to support the view of the Oregon Court that, because Congress did not expressly provide for a procedural mechanism in ERISA to collect judgments, Congress thereby intended to express acceptance of "the practice of refusing garnishment" of the benefits of an ERISA plan. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152.

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[11] Thus, Congress was not silent on this issue. As this Court noted in *Mackey*:

> Once Congress was sufficiently aware of the prospect that ERISA plan benefits could be attached and/or garnisheed—as evidenced by its adoption of § 206(d)(1)—Congress' decision to remain silent concerning the attachment or garnishment of ERISA welfare plan benefits "acknowledged and accepted the practice, rather than prohibiting it." *Alessi v Raybestos-Manhattan, Inc.* [*supra*].

486 U.S. at 837.

Congress did not silently "acquiesce" to the garnishment of ERISA welfare benefit plans, as the Oregon Court erroneously suggested. Instead, as this Court noted in *Mackey*, Congress deferred to state law "to provide methods for *collecting* judgments." 486 U.S. at 834 (emphasis added).

4.

The Oregon Court erred in ruling that ERISA mandates uniform treatment of ERISA plans but not ERISA benefits, and also in ruling that Congress did not intend for there to be uniformity of garnishment procedures from state to state.

The Oregon Court erroneously rejected preemption of Oregon's anti-garnishment law by ERISA based on a supposed distinction the Court drew between ERISA *plans* and ERISA plan *benefits*. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152. In that regard, the Court erroneously relied on this Court's decision in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987).

In *Fort Halifax*, this Court held that a Maine law requiring a one-time severance payment to employees as a result of a plant closing was not preempted by ERISA. The reason that the state law was not preempted by ERISA was that the subject of that law was not an employee welfare benefit plan; it was merely an employee benefit:

> We hold that the Maine statute is not pre-empted by ERISA . . . because the statute neither establishes, nor requires an employer to maintain, an employee welfare benefit "plan" under that federal statute.

482 U.S. at 6 (footnote omitted). Thus, this Court drew a distinction between an ERISA "plan" (with its accompanying benefits) and employee "benefits" not arising from an ERISA plan.

The Oregon Court incorrectly characterized the nature of Standard's argument as focusing on ERISA *benefits*. Standard's argument is *not* based on the premise that Oregon's anti-garnishment law relates to a "benefit" but that it relates to an employee welfare benefit *plan*. While the actual garnishment in this matter also would relate to Saklad's employee welfare *benefits*, it is the inability of Standard to garnish under the anti-garnishment law that "relates to" the defrauded ERISA welfare benefit *plan* in a number of important ways, as discussed above. It is *not* the effect on the "benefits" that is at issue and requires preemption, it is the impact on ERISA employee welfare benefit *plans* if they are unable to garnish and be garnished.

Thus, the Oregon Court erroneously assumed that Standard is arguing that Oregon's anti-garnishment law is preempted because of its impact on the benefits that Standard is attempting to garnish. Standard consistently has argued that Oregon's anti-garnishment law is preempted because it relates both to ERISA plans (the defrauded plan and the plan being garnished) and to employee welfare benefit plans in general, not just to the benefits that are being garnished.

The discussion in *Fort Halifax* about the difference between a "plan" and "benefits" is not applicable to this matter because in this matter an ERISA plan *is* affected; the defrauded ERISA plan is affected by not being able to garnish and thus recoup its plan assets fraudulently obtained by Saklad, the current beneficiary of Standard's other ERISA plan. *Fort Halifax* stands for the proposition that if there is no ERISA plan, there is no preemption. However, if an ERISA plan does exist, then any benefits that are affected by the anti-garnishment law (which benefits would not exist absent the plan) are part of the ERISA plan and thus governed by ERISA. Thus,

while *Fort Halifax* stands for the proposition that not all state laws relating to employee benefits are preempted by ERISA, all employee benefits arising under an ERISA plan *are* governed by ERISA exclusively, and any state laws purporting to regulate them are preempted. *Fort Halifax*, 482 U.S. at 14 n. 8.

The Oregon Court simply was wrong in concluding that, based on an erroneous interpretation of ERISA's preemption provision, "[w]hether or not a check is garnished after administrative procedures are complete has nothing to do with a 'plan' " governed by ERISA. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152. The reasoning of the court in *Greany v. Western Farm Bureau Life Ins. Co.*, 973 F.2d 812 (9th Cir. 1992), is instructive because the court rejected a benefit-plan distinction, *i.e.*, the court rejected an argument that a conversion policy and the facts surrounding its processing after an employee terminated his employment constituted merely an employee *benefit* because the employee was no longer covered under the employee welfare benefit *plan*. *Id.* at 817. Such a distinction is meaningless, as the court in *Greany* ruled, because the conversion policy related to the plan in that the "opportunity to convert the group plan to an individual policy is a benefit provided pursuant to the group plan." *Id.* Because the individual conversion benefits are part of an ERISA plan, the court in *Greany* correctly concluded that the benefits are governed by ERISA, and any state law claims therefore are preempted. *Id.*[12]

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[12] *See* Standard's Petition for Writ of Certiorari, pp. 22-24, where Standard discusses this issue and a conflict between the Oregon Court's ruling in this regard and a recent decision of the Tenth Circuit in *Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9, supra*, where that court rejected a similar distinction.

Similarly, in this matter the ERISA plan benefits that the defrauded ERISA plan is attempting to garnish do not cease being part of an employee welfare benefit plan after the check is issued, as they are payable due to the existence of the ERISA plan and pursuant to its terms. The Oregon Court, however, erroneously focused on the effect of the actual garnishment on the beneficiary's benefits, not upon the effect of the inability of the defrauded ERISA plan to garnish another ERISA plan and the effect on other ERISA plans in general.

CONCLUSION

The decision of the Oregon Court that Oregon's anti-garnishment law prohibits Standard from collecting on a judgment in Oregon that was lawfully obtained under ERISA's exclusive civil enforcement provisions is contrary to and inconsistent with decisions of this Court that recognize the extremely broad preemptive reach of ERISA. That decision will thwart the legal responsibility of a fiduciary of a defrauded ERISA plan to recoup losses due to fraud committed by a plan beneficiary. That decision also creates a risk of undermining the uniform federal regulation of ERISA plans mandated by ERISA and re-

peatedly recognized by this Court. Therefore, this Court should grant certiorari and reverse that decision.

DATED: December 23, 1993.

Respectfully submitted,

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No. 93-799

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,
Petitioner,

v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of the State of Oregon

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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30 pp

QUESTION PRESENTED

Under the preemption provision of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), may the State of Oregon provide a broad exemption to its general garnishment statute that shelters payments necessary to a subsistence income for the debtor, when those payments may come from a wide variety of sources, including, but not limited to, disability plans covered by ERISA?

PARTIES TO THE CASE

All parties to the case appear in the caption.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE CASE ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 2

STATUTES INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR DENYING THE WRIT 7

A. The Decision Below is Consistent with this Court's ERISA Preemption Decisions, Including *Mackey*. 8

B. The Decision Below Does Not Conflict with Any Decision of a Federal Court of Appeals or State Court of Last Resort 14

CONCLUSION 22

TABLE OF AUTHORITIES

Cases: **Page:**

Aetna Life Ins. Co. v. Borges, 869 F.2d 142 (2d Cir.), *cert. denied*, 493 U.S. 811 (1989) 20, 21

Beers v. Haughton, 34 U.S. (9 Pet.) 329 (1835) 13

Carpenters Southern California Administrative Corporation v. El Capitan Development Company, 53 Cal. 3d 1041, 811 P.2d 296, *cert. denied*, 112 S. Ct. 430 (1991) 19, 20

In re Dyke, 943 F.2d 1435 (5th Cir. 1991) 14, 15, 16, 17

Fink v. O'Neil, 106 U.S. 272 (1882) 13

Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550 (6th Cir. 1987) 21

Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1986) . . . . . 6, *passim*

Guidry v. Sheet Metal Workers International Association, Local No. 9, No. 92-1018, 1993 U.S. App. LEXIS 28,698 (10th Cir. Nov. 11, 1993) 15, 17

Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365 (1990) 14

Huron Holding Corp. v. Lincoln Mine Operating Co., 313 U.S. 183 (1941) 12

Ingersoll-Rand Co. v. McClendon, 111 S. Ct. 478 (1990) 10

Iron Workers Mid-South Pension Fund v. Terotechnology Corp., 891 F.2d 548 (5th Cir.), *cert. denied*, 497 U.S. 1024 (1990) 18, 19, 20

Mackey v. Lanier Collections Agency, 486 U.S. 825 (1988) . . . . . 5, *passim*

Martori Bros. Distributors v. James-Massengale, 781 F.2d 1349 (9th Cir. 1986) 20, 21

Pilot Life Ins. Co. v. Dedaux, 481 U.S. 41 (1987) . . . 10

Rebaldo v. Cuomo, 749 F.2d 133 (2d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985) 20

In re Schlein, 8 F.3d 745 (11th Cir. 1993) 15, 16

Shaw v. Delta Air Lines, 463 U.S. 85 (1983) . . 8, 9, 15

Sommers Drug Stores v. Corrigan Enterprises, 793 F.2d 1456 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987) 20, 21

United States v. Miller, 229 F.2d 839 (3d Cir. 1956) . 13

In re Vickers, 954 F.2d 1426 (8th Cir.), *cert. dismissed*, 113 S. Ct. 4 (1992) 15

Statutes and Rules:

11 U.S.C. § 522(b) 15

28 U.S.C. § 1257 2

Employee Retirement Income Security Act of 1974:
29 U.S.C. § 1056(d)(1) 14
29 U.S.C. § 1106 5
29 U.S.C. § 1144(a) . . . . . 3, *passim*
29 U.S.C. § 1144(d) 15

Colo. Rev. Stat. § 13-54-104(b) 17

Or. Rev. Stat. § 23.160(1)(j)(C) 2, 4

Or. Rev. Stat. § 23.305 15

Or. Rev. Stat. § 743.050 5

Federal Rule of Civil Procedure 69(a) 12, 13

Supreme Court Rule 10.1 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-799

STANDARD INSURANCE COMPANY,
Petitioner,

v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of the State of Oregon

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinions of the Oregon Circuit Court, denying respondent's claim of exemption from garnishment, are unreported. They are reprinted in the Appendix to the Petition ("Pet. App.") at 6-9. The opinion of the Oregon Court of Appeals, reversing the Circuit Court and upholding respondent's claim of exemption, is reported at 119 Or. App. 91, 849 P.2d 1150, and is reprinted at Pet. App. 1-4. The

order of the Supreme Court of Oregon denying review is noted at 317 Or. 486, 858 P.2d 876, and is reprinted at Pet. App. 5.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The Supreme Court of Oregon denied discretionary review on August 24, 1993, and the petition for writ of certiorari was filed on November 19, 1993.

STATUTES INVOLVED

1. The Oregon statute governing execution of judgments against property, Or. Rev. Stat. § 23.160, provides in pertinent part as follows:

> 23.160. Leviable property generally; selectable exemptions. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or the agent of the judgment debtor at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, except as provided in ORS 23.220, shall be exempt from execution:
>
> * * * *
>
> (j) The debtor's right to receive, or property that is traceable to:
>
> * * * *
>
> (C) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor.

2. Section 514(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1144(a), provides as follows:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

STATEMENT OF THE CASE

Oregon, like every other state, has a statute providing for the execution of money judgments. Like every other state, Oregon also has made the policy determination that judgment debtors should be allowed to retain certain minimal resources necessary to a subsistence living, and, to that end, has exempted small amounts of assets and income from the execution of judgments. This case concerns the validity of Oregon's determination that disabled judgment debtors, who are unable to earn income by working at a job, should be allowed to retain the resources necessary for their survival, even in the face of a large tort judgment against them.

1. In the late 1970's, respondent Jerome Saklad became insured under a group long-term disability policy issued by petitioner Standard Insurance Company to Industrial Electronics Engineers, Inc. ("IEE"), his employer at the time. After he contracted Legionnaires' Disease, respondent submitted a disability claim to Standard under the IEE policy in October 1979. He was ultimately paid about

$200,000 in benefits, including a lump-sum payment of $80,000.

Respondent later become insured under a second disability policy issued by Standard to Master Plating, Inc., a business owned and operated by members of his family. In 1987, respondent submitted a disability claim to Standard under the Master Plating policy, stating that he suffered from cardiomyopathy, a terminal degenerative heart disease. It is uncontested that respondent's second disability claim is valid, and that Standard is obligated to pay respondent disability benefits under the terms of the Master Plating policy. Nevertheless, respondent's second disability claim prompted an investigation by Standard, and, based on this investigation, Standard filed suit against respondent in the United States District Court for the Central District of California, seeking to recover the benefits previously paid to him under the IEE policy. The District Court eventually ruled that Standard was entitled to the return of benefits paid to Saklad under the IEE policy from 1980 through 1984, plus prejudgment interest, and entered a judgment against Saklad for over $360,000.

2. Standard then registered the judgment in the Circuit Court of Multnomah County, Oregon, where its principal place of business is located, and attempted to garnish for itself the benefits that it was obligated to pay Saklad under the Master Plating policy. Saklad argued that his benefits were exempt from garnishment under the provision of Oregon's general statute governing execution of judgments that exempts any "payment in compensation of loss of future earnings of the debtor ... to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." Or. Rev. Stat. § 23.160(1)(j)(C). The Circuit Court for Multnomah County held that the garnishment was valid, notwithstanding the Oregon law,

because the Oregon statute was preempted by ERISA. Pet. App. 6-7.[1]

3. The Oregon Court of Appeals unanimously reversed, ruling that the garnishment exemption provided by Oregon law was not preempted by ERISA. *See* Pet. App. 1-4. The Court first rejected Standard's argument that preemption was compelled under the reasoning of this Court's decision in *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), holding that ERISA preempted a Georgia statute that specifically exempted benefits under ERISA plans from garnishment. The Court pointed out that, while *Mackey* indicated that such a specific reference to ERISA plans in a state law invariably leads to preemption, Oregon "does not treat ERISA plans differently from non-ERISA plans and so is not *automatically* preempted." Pet. App. 3 (emphasis added).

The Court of Appeals then went on to consider the significance of this Court's second holding of *Mackey*, that Georgia's general garnishment statute was not preempted by ERISA. In *Mackey*, this Court stated that Congress had generally "acknowledged and accepted" the states' practices of garnishment as a method of executing judgments, and that ERISA plans, as garnishees, were not *per se* exempt from garnishment procedures. *See Mackey*, 486 U.S. at 837. Standard argued to the Court of Appeals that, since Congress had acknowledged the practice of garnishment generally in

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[1] Saklad also argued that his benefits were exempt from garnishment under Or. Rev. Stat. § 743.050, which provides that the proceeds of insurance policies "providing benefits on account of the insured's disability" are exempt from all liability for debts of an insured, and that Standard's action in garnishing benefits that it owed to Saklad was a "prohibited transaction" under section 406 of ERISA, 29 U.S.C. § 1106. The Circuit Court rejected these arguments, and the Court of Appeals did not reach them, as it reversed on the ground set forth in the petition.

ERISA, permitting the operation of the Oregon exemption in this case would impair the garnishment procedure that Congress had approved.

The Court of Appeals concluded that Standard's argument misread *Mackey*. According to the Court, the fact that Congress, by remaining silent, had acknowledged the possibility of garnishment against ERISA welfare plans, did not mean that Congress had intended to override all state-law exemptions or limitations to that practice. The Court of Appeals reasoned that Congress must have been aware of, and accepted, the various state practices concerning garnishment, "including the practice of refusing garnishment." Pet. App. 3.

Finally, the Court of Appeals rejected Standard's argument that the Oregon garnishment exemption undermines ERISA's policy of uniform treatment of ERISA welfare benefits because Oregon judgment debtors would be able to claim the exemption for disability benefits while judgment debtors in other states might not be able to claim a similar exemption. The Court observed that Standard's argument was wide of the mark because ERISA does not mandate uniform treatment of benefits, but only uniform regulation of benefit plans. Relying on this Court's decision in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1986), the Court of Appeals noted that the term "benefit plans," as used in ERISA's preemption provision, refers to administrative procedures governing claims processing, benefits calculation, and pay-out. Because the Oregon garnishment statute does not implicate any of Standard's procedures in these areas, the Court concluded, the possibility that disability benefits might be garnished in another state, but not in Oregon, did not raise any concern about uniformity of treatment of benefit plans. Pet. App. 4.

The Oregon Supreme Court denied discretionary review, Pet. App. 5, and Standard's petition for certiorari followed.[2]

REASONS FOR DENYING THE WRIT

The petition should be denied because it presents none of the considerations warranting review outlined in this Court's Rule 10.1. The decision of the Oregon Court of Appeals does not conflict with *Mackey* or with any of this Court's other ERISA preemption decisions. Nor is this a case where a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a federal court of appeals. *See* Sup. Ct. Rule 10.1(b). Since *Mackey*, no state supreme court or federal appellate court has held that a state's garnishment exemption for employee welfare benefits is preempted by ERISA. Finally, while the validity of a state's garnishment exemption is, in the abstract, an important issue, there is no need for this Court's intervention because the Court of Appeals resolved that issue in a way that does not impair the integrity of ERISA's regulatory scheme.

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[2] Standard has also filed another action against Saklad in the United States District Court for the Central District of California, alleging a right to equitable setoff against the benefits due under the Master Plating Policy. The District Court recently entered an order permitting Standard to deposit into the Court all funds due to Saklad under the Master Plating Policy, pending the outcome of the new action. Memorandum and Order Regarding Plaintiff's Motion for Rule 67 Deposit, *Standard Ins. Co v. Saklad*, No. CV 93-5472 RG (C.D. Cal. Jan. 5, 1994). Therefore, despite the Oregon Court of Appeals' conclusion that Saklad was entitled to an exemption from garnishment, Saklad is not currently receiving any benefits under the Master Plating policy.

A. The Decision Below is Consistent with this Court's ERISA Preemption Decisions, Including *Mackey*.

Section 514(a) of ERISA preempts state laws if they "relate to" employee benefit plans. 29 U.S.C. § 1144(a). This Court has stated that "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a *connection with* or *reference to* such a plan." *Shaw v. Delta Air Lines*, 463 U.S. 85, 96-97 (1983) (emphasis added and footnote omitted). While the reach of ERISA's preemption provision is therefore quite broad, this Court has also cautioned that it is not boundless: "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.* at 100 n.21. Thus, ERISA does not preempt state laws that merely "affect" benefit plans in some way, nor does it preempt state laws that relate only to "benefits," and not "benefit plans." *See generally Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987). Without these sensible limitations, ERISA would swallow up entire sections of state codes in a fashion wholly unanticipated, and undesired, by Congress.

Despite these limitations, Standard argues that state laws are preempted whenever they affect ERISA plans, regardless whether the laws were intended to regulate such plans, or whether the laws implicate the specific concerns that motivated Congress to enact the preemption provision. This argument goes far beyond the reach of the ERISA preemption provision, as intended by Congress and as construed by this Court. Even though Oregon's garnishment exemption may have some incidental effect on ERISA plans, just as it has on a wide range of other judgment creditors and garnishees, it is not preempted because it has neither a "reference to" nor a "connection with" ERISA plans, as this Court has used those terms in its ERISA preemption decisions.

1. The Oregon garnishment exemption does not have a "reference" to employee benefit plans because it does not single out such plans for special treatment. The Oregon statute does not mention ERISA, or ERISA plans, or even benefit plans generally. The Oregon statute simply provides a limited shelter from execution for funds paid in compensation for loss of future earnings, regardless of the source of the funds, when the money is necessary for the support of the debtor. It is irrelevant whether the funds come from an ERISA plan, a personal injury judgment, a worker's compensation award, or a payment from an individual (non-ERISA) disability insurance policy; all are subject to the Oregon garnishment exemption. As the Court of Appeals pointed out, the statute "does not treat ERISA plans differently from non-ERISA plans and so is not automatically preempted." Pet. App. 3.

This conclusion is consistent with the first part of this Court's decision in *Mackey*, where the Court "reaffirmed" the rule that state laws are preempted if they "make 'reference to' ERISA plans." 486 U.S. at 829. This Court explained that, in using the term "reference" to ERISA plans in *Shaw* and subsequent cases, it had in mind those state laws that specifically address employee welfare plans: "[W]e have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are preempted under [ERISA]" *Id.*; *see also id.* at 830 ("adhering to our precedents in this area, we hold that [the Georgia statute], which singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures, is preempted") (footnote omitted).

2. Nor does the Oregon garnishment exemption have a "connection to" ERISA plans, under any sensible reading of that term. "ERISA's preemption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities.... Pre-emption ensures that the administrative procedures of a

benefit plan will be governed by only a single set of regulations." *Fort Halifax*, 482 U.S. at 11.

The Oregon law at issue here does not implicate this concern for uniformity. It does not govern the administration of ERISA plans; nor does it require the payment of benefits, regulate vesting, or impose substantive duties or obligations on plan participants, beneficiaries, or fiduciaries. The statute does not require any plan "to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; [or] to comply with certain fiduciary standards in some States but not in others." *Id.* at 9. All the Oregon law does is provide a limited shelter for disability payments from judgment creditors, whether or not the benefits are traceable to an ERISA plan, and whether or not the judgment creditor is an ERISA plan.

Standard objects to the Oregon law on the ground that it supposedly creates "substantive rights" in ERISA participants that are not recognized by ERISA itself. *See* Pet. for Cert. 9. This argument is wide of the mark, however, because it has nothing to do with the particular concern for uniform regulation of benefit plans that informs this Court's ERISA preemption decisions. While Oregon's garnishment exemptions may not be purely "procedural," in that they do more than merely set out the procedures which must be followed in garnishment proceedings, they do not create any rights that implicate the considerations that led to the enactment of the ERISA preemption clause. The Oregon garnishment law does not, for example, create any new duty in the administration, funding, or vesting requirements of the plan running from the fiduciary or the employer to the beneficiary. *Cf. Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990) (preempting state cause of action alleging unlawful discharge to prevent vesting of benefits); *Pilot Life Ins. Co. v. Dedaux*, 481 U.S. 41 (1987) (preempting state cause of action for improper processing of insurance benefit claim).

The fact that the judgment creditor in this case is an ERISA plan is purely coincidental to the operation of the garnishment exemption. Because Oregon has made the policy determination that disability payments needed to support the debtor should be exempt from all judgment creditors, respondent would be entitled to the same exemption if the judgment entered against him had arisen out of a contract claim, or out of an individual (non-ERISA) disability insurance policy. He would also be entitled to the exemption even if his first disability insurance policy had been an ERISA plan, but had been written by a different insurer than the one that wrote the second policy. The fact that the judgment creditor in this case happens to be an ERISA plan, and the same ERISA plan as the garnishee, is irrelevant to the operation of the Oregon statute.

Nor does the Oregon law's treatment of Standard as garnishee have anything to do with the operation of ERISA. Respondent could also claim the exemption if the payments were due to him from an individual insurance policy, or from a tort judgment that he had won as a result of an automobile accident. Thus, the exemption would operate in exactly the same way if, for example, respondent had become entitled to the disability payment as a result of an automobile accident, but had a judgment for damages entered against him in a lawsuit arising from his failure to close on a residential real estate contract.

Further, the garnishment *exemption* imposes no administrative burdens on the plan as garnishee. Unlike the situation in *Mackey*, where the ERISA plan argued (unsuccessfully) that the need to comply with garnishment proceedings imposed undue administrative burdens on the plan, the Oregon garnishment exemption does not require the plan to respond to court proceedings, to pay money into the court, or to undertake administrative processing of the garnishment order. *Cf. Mackey*, 486 U.S. at 831. Thus, there is no reason to believe that the operation of the garnishment exemption will even remotely implicate ERISA's

concern for uniform treatment of administration of ERISA plans.

The key flaw in Standard's argument is its assertion, based on a quotation from *Mackey* taken out of context, that the state law exemption must be preempted because it obstructs an ERISA plan's right "'to sue,' which implies a right to collect on money judgments." Pet. for Cert. 13. If Standard's reasoning were extended to its logical conclusion, then all state garnishment and attachment exemptions would be inconsistent with ERISA. For example, state-law homestead exemptions would be preempted, as would the typical state law placing a percentage cap on wages that may be garnished, because both obstruct a plaintiff's right to collect fully on a judgment won under ERISA.

Moreover, as this Court has noted, "'[a] cause of action on a judgment is different from that upon which the judgment was entered.'" *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 313 U.S. 183, 194 (1941) (footnote and citation omitted). ERISA itself makes no provision for execution of judgments against employee welfare benefits, and so Standard is dependent on Oregon law to invoke its right to use garnishment proceedings to collect on its judgment. Nothing in the language of ERISA or any other federal law compels Oregon to offer the writ of garnishment to judgment creditors as a method of execution. But, having invoked Oregon law to claim its right to garnishment, Standard is in no position to argue that parts of the same law that it dislikes are preempted by ERISA. By seeking dispensation from Oregon's garnishment exemption, Standard is really asking for special treatment in the enforcement and collection of its judgments, but Standard, like every other judgment creditor, must take the bitter with the sweet.

3. Standard's argument is also contrary to the policy expressed in Rule 69(a) of the Federal Rules of Civil Procedure, which incorporates state law governing the execution of judgments:

> The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

Rule 69(a) incorporates the "substantive" state-law exemptions from garnishment as well as the procedures for garnishment proceedings, even when the cause of action arises under federal law, and even when the judgment creditor is the United States. *See United States v. Miller*, 229 F.2d 839, 841 (3d Cir. 1956); *see also Fink v. O'Neil*, 106 U.S. 272, 279 (1882) (United States subject to state-law homestead exemption on execution of judgment; federal courts required to follow state law in execution of judgments). Federal policy in this matter has been the same, almost without interruption, since the Judiciary Act of 1789. *See Beers v. Haughton*, 34 U.S. (9 Pet.) 329, 360-61 (1835).

As this Court noted in *Fort Halifax*, one of the principles governing the limitation of ERISA's preemption provision is the need for "'respect for the separate spheres of governmental authority preserved in our federalist system.'" 482 U.S. at 19 (citation omitted). State law has traditionally governed executions of judgment, and federal law has, to a great degree, acknowledged and adopted that state law, even when federal law has defined the substantive rights and provided the causes of action leading to judgments. In enacting ERISA, Congress gave no indication that it intended to do what petitioner urges, to disrupt the traditional balance between state and federal law as to execution against employee welfare benefits.[3]

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[3] Congress did alter that balance with regard to execution against employee *pension* benefits, which it largely prohibited in

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B. The Decision Below Does Not Conflict with Any Decision of a Federal Court of Appeals or State Court of Last Resort.

Even though Standard recognizes that the decision below does not actually conflict with *Mackey* or any other decision of this Court, it argues that review is warranted because the lower courts are divided in their interpretation of *Mackey*. *See, e.g.*, Pet. for Cert. 9, 15. In fact, none of the cases relied on by Standard conflicts with the decision below; they all involve either state laws specifically targeting employee benefit plans or issues remote from the one presented in this case.

1. Standard argues principally that the decision below conflicts with *In re Dyke*, 943 F.2d 1435 (5th Cir. 1991), and *Guidry v. Sheet Metal Workers International Association, Local No. 9*, No. 92-1018, 1993 U.S. App. LEXIS 28,698 (10th Cir. Nov. 4, 1993). *Amicus* Health Insurance

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[3](...continued)
section 206(d)(1) of ERISA, 29 U.S.C. § 1056(d)(1). *See Mackey*, 486 U.S. at 836-37; *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990). Section 206(d)(1) thus overrides Rule 69(a) of the Federal Rules of Civil Procedure and expressly prohibits execution of judgment against pension benefits, even when execution would be permitted by state law. By contrast, Congress remained silent with respect to execution against employee welfare benefits. When ERISA is placed against the background of Congress' traditional deference to state policy on execution of judgments, it appears unlikely that Congress intended, by this silence, to override all state exemptions protecting welfare benefits from execution of judgment. *See Mackey*, 486 U.S. at 834 ("state-law methods for collecting judgments must, as a general matter, remain undisturbed by ERISA"). As the Oregon Court of Appeals correctly observed, "[i]t does not follow that by [silently] acquiescing in garnishment Congress mandated that practice." Pet. App. 3.

Association of America also argues that the decision below conflicts with *In re Schlein*, 8 F.3d 745 (11th Cir. 1993). All these decisions are distinguishable because they concern statutes that expressly refer to employee benefit plans and treat such plans differently from sources of income not regulated by ERISA. Under a straightforward application of *Mackey*, they make "reference to," and therefore "relate to," employee benefit plans, and so they are preempted under section 1144 of ERISA. But these decisions do not cast any doubt on the validity of a broadly applicable state-law garnishment exemption that applies to a wide variety of assets and sources of income, like the law at issue here.[4]

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[4] Furthermore, both *Dyke* and *Schlein* held that the exemptions at issue were saved from preemption by another provision of ERISA, 29 U.S.C. § 1144(d), which provides that the preemption clause shall not be construed to impair or supersede "any law of the United States." In reaching this conclusion, the *Dyke* and *Schlein* courts emphasized that the Bankruptcy Code gives states the right to "opt out" of the federal scheme providing for exemptions from the bankruptcy estate and replace the federal list of exemptions with their own exemptions. *See Schlein*, 8 F.3d at 748-54; *Dyke*, 943 F.2d at 1449; *see also In re Vickers*, 954 F.2d 1426, 1429 (8th Cir.), *cert. dismissed*, 113 S. Ct. 4 (1992); *see generally* 11 U.S.C. § 522(b). States that do opt out of the federal scheme usually replace the federal exemptions with their own statutes providing generally for exemptions from execution of judgment. Thus, federal law incorporates these state-law exemptions into the Bankruptcy Code. *Cf. Shaw v. Delta Air Lines*, 463 U.S. at 102 (New York's Human Rights Law saved from preemption by § 1144(d), because preemption would impair the operation of Title VII, which required recourse to state law for enforcement).

Oregon has opted out of the federal bankruptcy exemption scheme and replaced it with its own exemptions, including the one at issue here. *See* Or. Rev. Stat. § 23.305. Thus, Oregon residents who file for bankruptcy are unquestionably entitled to

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In *Dyke*, for example, the Fifth Circuit emphasized that the Texas statute exempting pension benefits from attachment "specifically refer[red] to ERISA benefit plans." 943 F.2d at 1448. Although the statute did not use the word "ERISA," the Fifth Circuit observed that the statute covered "stock bonus, pension, profit-sharing, [and] similar plan[s]," which are "employee benefit plans" within the meaning of ERISA. *Id.* (emphasis deleted). The Court also noted that "the very purpose of [the statute] is to permit Texas debtors to exempt ERISA-qualified pension plans under the state exemption scheme." *Id.* For these reasons, the Court held that the Texas attachment statute "related to" employee benefit plans and distinguished that statute from laws of more general application that might incidentally bring benefit plans within their reach. *See id.* at 1447.[5]

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[4](...continued)
claim an exemption from garnishment for disability payments, to the extent those payments are necessary for their support. But it would be absurd for the validity of Oregon's exemption to depend on whether a particular judgment debtor has filed for bankruptcy, and such a rule would only encourage debtors to file for bankruptcy, with little benefit to Standard as a result.

[5] The reference to ERISA plans in the statute at issue in *Schlein* was even more narrowly targeted. The Florida exemption at issue there specifically sheltered pension plans qualified under sections of the Internal Revenue Code that refer to ERISA plans. The Eleventh Circuit thus had no difficulty in concluding that the Florida statute "made reference" to ERISA plans, and it described the issue in *Dyke* as "identical." 8 F.3d at 750. The Oregon exemption at issue here makes no specific reference to ERISA plans, although benefits from a few such plans, such as plans providing for disability benefits, are within its broad reach, while benefits from other kinds of ERISA plans, like pension plans and health-benefit plans, are not sheltered by the statute.

Guidry involved a similar garnishment statute that exempted the "'avails of any pension or retirement benefits, or deferred compensation plan.'" 1993 U.S. App. LEXIS 28,698 at *38 (quoting Colo. Rev. Stat. § 13-54-104(b)). The Tenth Circuit concluded that this statute was preempted "[b]ecause it is specifically applicable to ERISA pension plans," *Id.* at *39, and "because it singles out ERISA benefits for special treatment." *Id.* at *39-*40. The Tenth Circuit then went on to connect this holding to this Court's decision in *Mackey*, striking down the Georgia garnishment exemption that was targeted directly at ERISA benefit plans: "It is this singling out that preempts the Colorado anti-garnishment exemption. *Cf. Mackey*, 486 U.S. at 838 n.12." *Guidry*, *supra*, at *40 (footnote omitted).

Standard argues, however, that the decision below conflicts with *Guidry* and *Dyke* because those cases supposedly hold that a state law "relates to" an ERISA plan whenever it "implicitly encompasses" such a plan, whereas the decision below requires only that a state law not "single out ERISA plans for special treatment." Pet. for Cert. 17-19. Standard's interpretations of all three decisions are inaccurate. While the challenged state laws in *Guidry* and *Dyke* may not have specifically mentioned ERISA, they did refer specifically to ERISA *plans*, even though they did so circuitously by using language such as "avails of any pension or retirement benefits or deferred compensation plan" instead of "benefits from ERISA plans."

Standard is therefore wrong when it argues that *Guidry* and *Dyke* found that the state exemptions "related to" ERISA plans because they had a "decided impact on such plans." Pet. for Cert. at 15. In *Guidry* and *Dyke*, the Courts of Appeals concluded that the state laws "related to" ERISA plans because they singled out or made specific reference to those plans, not merely because they had some effect on them.

In any case, the decision below is distinguishable from *Guidry* and *Dyke* because the Oregon law takes an entirely different approach. Rather than addressing the source of the proceeds (*e.g.*, a benefit plan), it addresses the purpose for which the income is received (compensation because of disability), regardless of its source. Thus, benefits from an ERISA welfare plan attributable to accrued vacation pay would not be exempt from execution (unless they were payable because of disability), whereas proceeds of a personal injury award would be exempt, just like disability payments from an ERISA plan, even if the judgment had nothing to do with an ERISA plan.

Standard argues further that the Court of Appeals and other lower courts have misinterpreted *Mackey* and have been willing to find that a state law "relates to" ERISA plans *only* when the law singles out such plans. In fact, the Oregon Court of Appeals did not fall into this error. Standard seizes on one sentence in the Oregon Court of Appeals' opinion, which stated that the Oregon garnishment statute was distinguishable from the Georgia statute struck down in *Mackey* because the Georgia law specifically targeted ERISA plans. Pet. for Cert. 17. The Oregon Court of Appeals did not hold, however, that state laws that do not specifically target ERISA plans are never subject to scrutiny for preemption. It stated only that such laws are not "*automatically* preempted" under *Mackey*, as are statutes that single out ERISA plans. Pet. App. 3 (emphasis added). The Oregon Court of Appeals never suggested that a statute that attempted to regulate ERISA plans by addressing the funding or administration of ERISA plans would not be preempted merely because the statute did not specifically mention employee benefit plans. It was unnecessary for the Court of Appeals to consider such a situation, because this case does not involve a state law that attempts to regulate employee benefit plans.

2. Standard also argues that the decision below conflicts with *Iron Workers Mid-South Pension Fund v.*

Terotechnology Corp., 891 F.2d 548 (5th Cir.), *cert. denied*, 497 U.S. 1024 (1990), and *Carpenters Southern California Administrative Corporation v. El Capitan Development Company*, 53 Cal. 3d 1041, 811 P.2d 296, *cert. denied*, 112 S. Ct. 430 (1991). Pet. for Cert. 9. Those cases have little to do with the issue presented here, however.

Both *Iron Workers* and *Carpenters Southern* involved a situation where an employer had failed to pay contributions to an ERISA welfare benefit fund, and the fund then attempted to record a lien (similar to a mechanic's lien) against a third party that had no direct obligation to the fund under ERISA. In both cases, the fund relied on a state law allowing employee trust funds to proceed against property owners, without regard to whether the owner was directly liable to the fund under ERISA. In both cases, the courts held the statute to be preempted because it was specifically designed to, and did, regulate one of the core matters of ERISA, liability for funding of an employee welfare benefit plan. As the Fifth Circuit stressed in *Iron Workers*, the Louisiana statute was preempted because it attempted to interfere in one of the core concerns of ERISA, "the funding of employee benefit plans," 891 F.2d at 554, and also because it expressly referred to employee benefit plans, *id.* at 553. Similarly, in *Carpenters Southern*, the California Supreme Court held that the California statute was preempted by ERISA because it was specifically designed to affect ERISA plans, 53 Cal. 3d at 1049, 811 P.2d at 300, because it directly regulated ERISA plans by creating a funding mechanism for those plans not provided by Congress, *id.* at 1052, 811 P.2d at 301, and because it "single[d] out ERISA plans for special treatment," *id.* at 1049, 811 P.2d at 300.

Neither *Iron Workers* nor *Carpenters Southern* resembles the case at bar. The Oregon garnishment statute does not intrude into the funding or administration of ERISA plans, nor does it purport to give ERISA beneficiaries or participants greater rights in the funding or administration of

the plan, or the payment of benefits, than they would have under ERISA itself.

3. As the federal Courts of Appeals have uniformly recognized, when a state law does not specifically refer to ERISA plans, but brings such plans incidentally within its reach, the determination whether a state law is preempted by ERISA must be based on the state law's relation to the specific concerns which led Congress to enact the ERISA preemption provision. In the ERISA context, as with any other pre-emption analysis, "'the purpose of Congress is the ultimate touchstone.'" *Fort Halifax*, 482 U.S. at 8 (citations omitted). Thus, if the challenged law has little to do with the core regulatory concerns of ERISA, "the mere fact that [a] statute has some economic impact on the plan does not require that the statute be invalidated." *Rebaldo v. Cuomo*, 749 F.2d 133, 139 (2d Cir. 1984), *cert. denied*, 472 U.S 1008 (1985). This limitation on ERISA preemption is necessary because "'federal exclusivity [was] a corollary of regulatory coverage, not an independent statutory goal'" of Congress. *Martori Bros. Distributors v. James-Massengale*, 781 F.2d 1349, 1359 (9th Cir. 1986) (citation omitted). As the Second Circuit has remarked, "[a] preemption provision designed to prevent state interference with federal control of ERISA plans does not require the creation of a fully insulated legal world that excludes these plans from regulation of any purely local transaction." *Rebaldo*, 749 F.2d at 138.

While not every formulation by every court of the principles underlying ERISA preemption is identical, the basic approach taken by all the federal Courts of Appeals is essentially the same: A state law is not preempted by ERISA if it does not affect "relations among the principal ERISA entities -- the employer, the plan fiduciaries, the plan, and the beneficiaries -- as such[.]" *Sommers Drug Stores v. Corrigan Enters.*, 793 F.2d 1456, 1470 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987); *see Aetna Life Ins. Co. v. Borges*, 869 F.2d 142, 146 (2d Cir.) ("[L]aws that have been ruled preempted are those that provide an alternative cause

of action to employees to collect benefits protected by ERISA, refer specifically to ERISA plans and apply solely to them, or interfere with the calculation of benefits owed to an employee"), *cert. denied*, 493 U.S. 811 (1989); *Martori Bros.*, 781 F.2d at 1357-58 (state law preempted if it regulates "the matters regulated by ERISA: disclosure, funding, reporting, vesting, and enforcement of benefit plans"); *Firestone Tire & Rubber Co. v. Neusser*, 810 F.2d 550, 555-56 (6th Cir. 1987) (similar). Even if ERISA plans are swept within the general regulatory reach of a state statute, that law is not preempted if the law applies to persons "without regard to their status as participants in an ERISA plan." *Firestone*, 810 F.2d at 556.

Under any of these formulations, the Oregon garnishment statute would not be preempted because it does not affect the relationship of Saklad and Standard as ERISA fiduciary and beneficiary. While it so happens that, in this particular case, the judgment debtor protected by the statute is an ERISA beneficiary, and the judgment creditor is an ERISA fiduciary, that is a pure coincidence. This case is therefore analytically similar to *Sommers Drug Stores*, *supra*, where the Fifth Circuit rejected the argument that a shareholder suit brought by an employee benefit plan against the employer, based on the state law of corporate fiduciary duty, was preempted by ERISA. The Court stressed that "the shareholder's rights against the corporate director ar[o]se solely from his status as shareholder," and that it was irrelevant that "the director happens also to be a plan fiduciary and the shareholder a benefit plan[.]" 793 F.2d at 1468.

4. The approach taken by the Courts of Appeals is consistent with, and based upon, this Court's explication of the scope of ERISA preemption in *Fort Halifax Packing Co. v. Coyne*. In that case, this Court concluded that a Maine law requiring employers to provide employees with a one-time severance payment in the event of a plant closing was not preempted by ERISA because "pre-emption of the Maine

statute would not further the purpose of ERISA pre-emption." 482 U.S. at 8. After surveying Congress' concern about the complexity of administering employee benefit plans, this Court concluded that "Congress intended pre-emption to afford employers the advantages of a uniform set of administrative procedures governed by a single set of regulations[,]" *id.* at 11, not a broad-ranging immunity from state regulations of general applicability.

The concern underlying ERISA's preemption provision is remote from the issues raised by this case, which does not concern the administration of the plan at all, but only what happens to the benefits once they are due to be paid out by the plan. Oregon has not directed Standard to evaluate employee claims for disability benefits in a particular way. Rather, Oregon has made the policy decision to shelter minimal disability benefits against all creditors, including but not limited to ERISA plans. The particular concerns for uniform treatment of employee benefit plans that led to ERISA's preemption provision are not implicated by that policy decision. *See also Mackey*, 486 U.S. at 836 (distinguishing ERISA's anti-alienation provision, which has to do with "pension plan *benefits*," from ERISA's preemption provision, which has to do with benefit "*plans*"). Because Oregon's statute "creates no prospect of conflict" with ERISA, *Fort Halifax*, 482 U.S. at 19, the decision below is correct, and review by this Court is not warranted.

CONCLUSION

The writ of certiorari should be denied.

Respectfully submitted,

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